RESOLUTION NO. 24-013

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, [~~GRANTING~~/DENYING] A MAJOR MODIFICATION TO A MAJOR DEVELOPMENT PLAN AND CONDITIONAL USE FOR PROPERTY LOCATED AT 2407 N. ROOSEVELT BLVD (RE# 00002280-000100) IN THE CONSERVATION ZONING DISTRICT PURSUANT TO SECTIONS 108-91(C)(3), 122-63(E), AND 122-129 OF THE LAND DEVELOPMENT REGULATIONS OF THE CODE OF ORDINANCES OF THE CITY OF KEY WEST, FLORIDA.PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, Section 108-91(c)(3) of the Code of Ordinances (the "Code") of the City of Key West, Florida (the "City") provides that modifications to Major Development Plans that exceed those treated as administrative or minor modifications shall be treated in the same manner as the original approval; and

WHEREAS, Section 122-63(e) provides that revisions or additions to a Conditional Use shall be reviewed based on the criteria of Section 122-62(b) and (c), and the procedures governing such reviews shall be identical to the procedures identified for the respective development plan which are presented in article II of chapter 108; and

WHEREAS, City Commission Resolution 2014-316 approved a Major Development Plan and Conditional Use to allow for the construction and use of a dockage located at 2407 N. Roosevelt Boulevard in the Conservation zoning district; and

WHEREAS, the subject property at 2407 N. Roosevelt Boulevard (RE# 00002280-000100), is more particularly described in the unity of title recorded in Book 3233, Page 920 of the official records of the Clerk of the Circuit Court of Monroe County, Florida, is located in the Conservation zoning district, and

WHEREAS, the property owner has submitted a request to modify the conditions of the Major Development Plan and Conditional Use approval to allow the length of vessels permitted to utilize the dock facility to be increased from thirty (30) feet to forty (40) feet, and to allow for the regular mooring of charter vessels at the dock facility;

WHEREAS, Code Section 108-196(a) requires the Planning Board to review and approve, approve with conditions, or deny the proposed Major Development Plan in an advisory capacity to the City Commission; and

WHEREAS, this matter came before and was recommended for approval by the Planning Board at a duly noticed public hearing on December 12, 2023; and

WHEREAS, pursuant to Section 108-91(c)(4), the City Commission shall review and act upon major modifications and modifications to specific conditions of major development plans,

WHEREAS, the City Commission does not ~~finds~~ that the

granting of a modification to the Major Development Plan and Conditional Use application is consistent with the criteria of the Code of Ordinances; and

WHEREAS, the City Commission does not finds that the granting of the modification to a Major Development Plan and Conditional Use application is in harmony with the general purpose and intent of the Land Development Regulations, and will not be injurious to the neighborhood, or otherwise detrimental to the public welfare.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, AS FOLLOWS:

Section 1. That the above recitals are incorporated by reference as if fully set forth herein.

Section 2. That the City Commission grants denies approval of the application for a Major Modification to the Major Development Plan and Conditional Use approved pursuant to City Commission Resolution 14-316, based upon review of the evidence not meeting the standard of substantial competent evidence with the following conditions:

The conditions of City Commission Resolution 14-316 are hereby amended and restated as follows (added language is underlined,

deleted language is ~~struck through~~.):

Conditions to be completed prior to the issuance of a building permit:

1. The Applicant receives all necessary permits from relevant State and Federal Agencies.
2. In addition to the existing on-site parking the Applicant shall make available twenty (20) exclusive parking spaces for use in association with the proposed development. Confirmation that said additional parking spaces are available for the proposed development shall be presented to the Planning Department prior to the issuance of any building permit, land clearing permit, or any permit required for physical furtherance of the proposed development. The City of Key West Attorney shall review any parking easement agreement between applicant and any property owner which is in furtherance of the above stated to ensure compliance with City of Key West Code Sec. 108-576(a).
3. If the construction project exceeds $500,000, the Applicant shall obtain approval of a Public Art Plan from the AIPP Board, pursuant to City Code Section 2-487, and may include payment of an in-lieu fee.
4. The Applicant shall obtain the proper permits for any trimming of mangroves during construction of the project.

Conditions to be completed prior to the issuance of a Certificate of Occupancy:

5. On-site artwork shall be installed and inspected by the City pursuant to Section 2- 487.

6. The Applicant coordinates with the U.S. Coast Guard to provide and maintain navigational markers from the docking basin to open water.
7. All lighting complies with "dark sky" or equivalent program on the docks themselves.
8. The Applicant will provide sewage pump-out facilities for all boats, with pump-out facility accessible 24 hours a day to all vessels of any length.
9. The Applicant shall provide the parking lot landscaping required by LDR Section 108-414(b) as evidenced by a landscape plan prepared by a licensed landscape architect and reflective of the conceptual design contained in the email to the Planning Department on July 8, 2014.
10. The onsite parking lot shall be striped and the driveway to said parking stalls, appropriately marked.
11. The clear site triangle for the accessory to North Roosevelt Boulevard shall be maintained clear of obstruction as per City Code.
12. The Applicant shall install the hose cabinets, standpipes and other fire suppression and alarms as required by the City Fire Marshall.
13. The parking lot on site shall be restriped to provide standard size stalls required by City Code, including two handicapped stalls.
14. There shall be no other commercial use of the marina area or parking lot, nor shall the development plan or conditional use authorize the change of the existing legally non-conforming uses to any other commercial use. ~~The existing legally nonconforming office use on the property may be continued as~~

~~office space for the dockage, subject to the restrictions in Condition 25 of this Resolution and in accordance with the Land Development Regulations.~~

15. There shall be no boat storage of any kind on the upland portions of the site inclusive of the parking lot.
16. The Applicant shall provide a fire department hammerhead turn- around as required by code.
17. The Applicant shall provide a letter from structural engineer determining the hammerhead access road in close proximity of the water line can safely handle the total weight of our fire department trucks.
18. The Applicant shall provide a secondary emergency egress walkway for emergency purposes only, approved location and specifications are addressed in the Fire Access Site Plan (Sheet Number: C-7.0).

Conditions subject to a Conditional Approval Permit, per Ordinance 10-22 subject to an associated annual inspection:

19. The applicant maintains a Florida Department of Environmental Protection Clean Marina Designation.
20. There shall be no use of the marina for charter boats of any kind, including active or passive docking of charter vessels. ~~Use of the dock by charter vessel establishments shall be limited to a maximum of six charter vessels with a maximum of six passengers each.~~
21. There shall be no boat ramp, or automobile or hoist assisted boat launching of any type.

22. There shall be no storage of boat trailers on any part of the site, nor in any of the parking spaces on site, or in leased areas.

23. No vessel longer than thirty (30) ~~forty (40)~~ feet, nor any vessel with draft of more than three (3) feet shall be docked, or allowed to use the marina.

24. There shall be no slips outside the mangrove fringe (per revised site plans dated October 22, 2014).

General Conditions:

~~25. The total commercial floor area on the upland shall be reduced from 6,914 square feet to a maximum of 948 square feet, limited to use as office space for the dockage. This condition does not represent review or approval of physical modifications to the existing upland structure, but functions to confirm that the legal nonconforming office use has not been abandoned at this time.~~

Section 3. ~~Full, complete and final application for all permits required for which this resolution is wholly or partly necessary, shall be submitted in its entirety within 12 months after the date hereof, pursuant to Section 108-203 of the Land Development Regulations~~.

Section 4. This Major Development Plan and Conditional Use application ~~approval~~ denial does not constitute a finding as to ownership or right to possession of the property, and assumes, without finding, the correctness of applicant's assertion of legal authority respecting the property.

Section 5. This resolution shall go into effect immediately upon its passage and adoption and authentication by the signatures of the presiding officer and the Clerk of the Commission.

Section 6. This resolution is subject to appeal periods as provided by the City of Key West Code of Ordinances (including the Land Development Regulations). After the City appeal period has expired, this permit or development order shall be rendered to the Florida Department of Commerce. Pursuant to Chapter 73C-44, F.A.C., this permit or development order is not effective for 45 days after it has been properly rendered to the DEO with all exhibits and applications attached to or incorporated by reference in this approval; that within the 45-day review period, the DEO can appeal the permit or development order to the Florida Land and Water Adjudicatory Commission; and that such an appeal stays the effectiveness of the permit until the appeal is resolved by agreement or order.

Read and passed on first reading at a regularly scheduled

meeting held this 11th day of January, 2024.

Authenticated by the presiding officer and Clerk of the Commission on January 17, 2024.

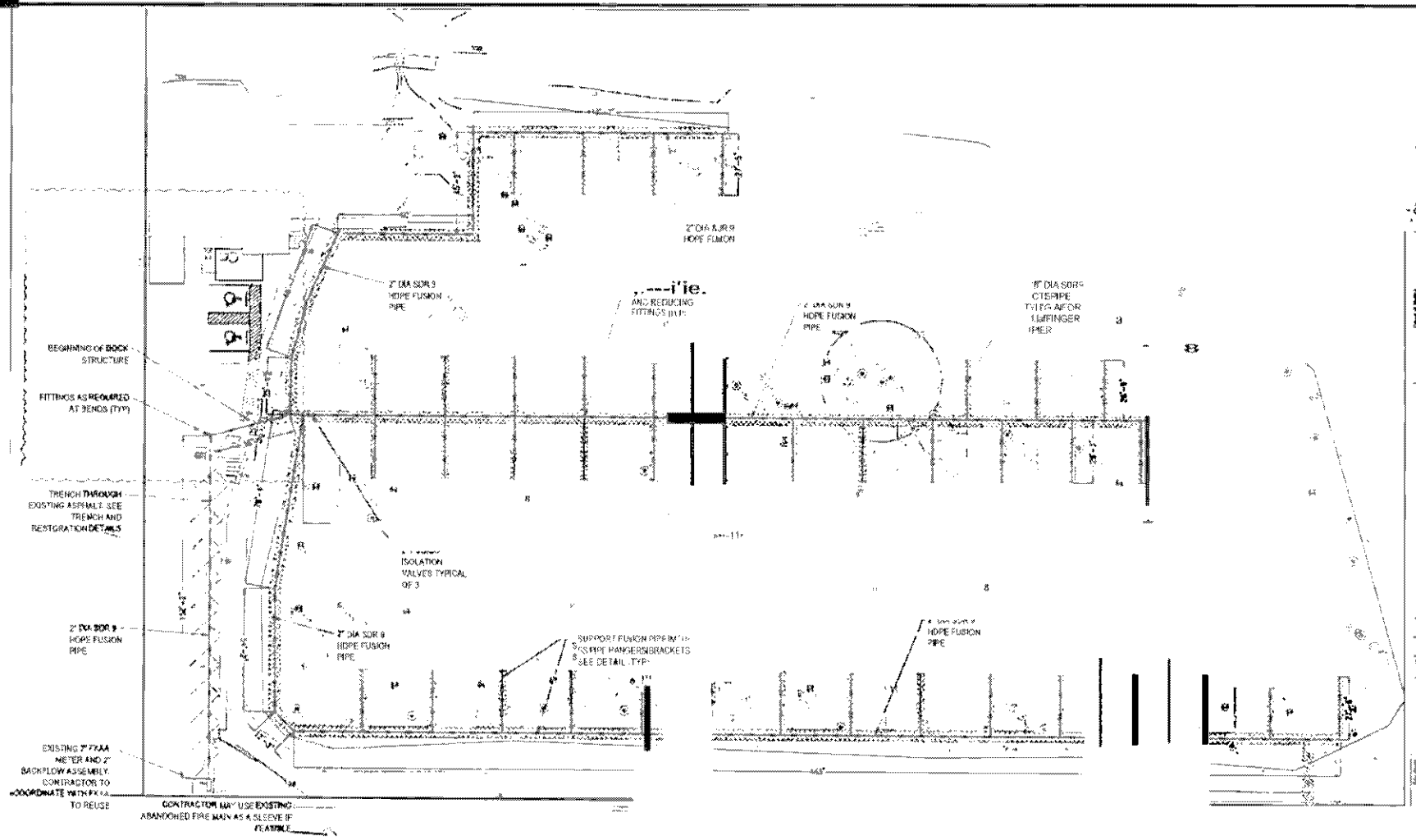
Filed with the Clerk the January 17, 2024.

Mayor Teri Johnston	Yes
Vice Mayor Sam Kaufman	Yes
Commissioner Lissette Carey	No
Commissioner Mary Lou Hoover	Absent
Commissioner Clayton Lopez	Yes
Commissioner Billy Wardlow	Yes
Commissioner Jimmy Weekley	Yes

TERI JOHNSTON, MAYOR

ATTEST:

KERI O'BRIEN, CITY CLERK


2" DIA SDR 9 HDPE FUSION PIPE
BEGINNING OF DOCK STRUCTURE
FITTINGS AS REQUIRED AT BENDS (TYP)
TRENCH THROUGH EXISTING ASPHALT. SEE TRENCH AND RESTORATION DETAILS
ISOLATION VALVES TYPICAL OF 3
2" DIA SDR 9 HDPE FUSION PIPE
2" DIA SDR 9 HDPE FUSION PIPE
EXISTING 2" FXAA METER AND 2" BACKFLOW ASSEMBLY. CONTRACTOR TO COORDINATE WITH FXA TO REUSE
CONTRACTOR MAY USE EXISTING ABANDONED FIRE MAIN AS A SLEEVE IF FEASIBLE
2" DIA SDR 9 HDPE FUSION PIPE
AND REDUCING FITTINGS (TYP)
2" DIA SDR 9 HDPE FUSION PIPE
8" DIA SDR 9 CTS PIPE TYTEN AEOR 1 (JeFRINGER IPER
HDPE FUSION PIPE
PROPOSED

C-2.0

MEMORANDUM

Date: January 11, 2024

To: Honorable Mayor and Commissioners

Via: Albert P. Childress
City Manager

From: Katie P. Halloran
Planning Director

Subject: **Major Modification to a Major Development Plan and Conditional Use – 2407 N. Roosevelt Boulevard (RE# 00002280-000100)** – A resolution of the City Commission of Key West, Florida [granting/denying] a Major Modification request for a Major Development Plan and Conditional Use, to authorize 948-square feet of upland office space, and the modification of conditions of approval to allow for the mooring of vessels up to forty feet in length, and the establishment up to six charter vessels at a dockage on property located at 2407 North Roosevelt Boulevard in the Conservation zoning district, pursuant to Section 108-91(C) of the Code of Ordinances of the City of Key West.

Introduction

This item is a request for a major modification to a Major Development Plan and Conditional Use authorized by City Commission Resolution 14-316, allowing for the construction of a 79-berth dockage in a basin located at 2407 North Roosevelt Boulevard in the Conservation zoning district.

Background

The property owner has submitted a request to modify three conditions of approval pursuant to Res. 14-316:

Office Space: Condition #14 of City Commission Resolution 14-316 restricts the change of existing legally nonconforming uses on the property to any other commercial use. At the time of approval, the legally nonconforming uses consisted of medical and business/professional offices. The applicant is seeking an established approval for 948-square feet of office space specifically associated with the dockage.

- Staff supports this request, and notes that any physical redevelopment of the upland must be accomplished in conformance with the LDRs.

Charter Vessels: Condition #20 of Res. 14-316 prohibits charter vessels from docking at the property. The applicant requests authorization for the establishment of up to six charter vessel operations at the property.

- The request to allow charter vessels is in violation of the LDRs and Comprehensive Plan. Charter vessels are only authorized to be established in duly-permitted marinas, and marinas are prohibited in the Conservation zoning district. Therefore, staff recommends denial of this request.

Vessel Length: Condition #23 of Res. 14-316 restricts the maximum vessel length to 30 feet and the maximum draft to three feet. The applicant is requesting approval to increase the maximum vessel length to 40 feet.

- The Comprehensive Plan and LDRs require that development applications in the Conservation zoning district include an environmental and coastal impact assessment that demonstrate that adverse impacts shall be avoided or mitigated. The applicant omitted an environmental and coastal impact assessment (Comprehensive Plan Policy 5-1.2.1; LDR Section 122-126).

- This modification would eliminate a mitigative strategy that was required as a condition of the existing approval; larger vessels with more powerful engine systems are more likely to increase turbidity, damage to marine habitat, and increase wave action that contributes to neighboring shoreline erosion.[1]

- Neighboring property owners have objected to the proposal on the basis that more powerful, frequent boat wakes may contribute to erosion of their shorelines and result in adverse environmental impacts.

- Staff is concerned about approving a request that may result in property damage, particularly given that multiple neighboring property owners have objected on this specific basis, and the application omitted impact assessments that are required per Code to demonstrate adverse impacts would be avoided.

Procurement

There is the potential for more tax revenue if the property value increases.

[1] Glamore, W. C. (2008, February). A decision support tool for assessing the impact of boat wake waves on inland waterways. In International Conference on Coastal and Port Engineering in Developing Countries (No. 1, p. 20).

Recommendation

Planning Board:

The Planning Board recommends approval of the following modifications to conditions associated with City Commission Resolution 14-316:

> **Condition 14:** There shall be no other commercial use of the marina area or parking lot, nor shall the development plan or conditional use authorize the change of the existing legally non-conforming uses to any other commercial use, unless an application for a change of nonconforming use is submitted and approved in accordance with the Land Development Regulations. This resolution affirms that the applicant is permitted to maintain 948 square feet of legally nonconforming medical and business/professional office uses for use as an office for the dock facility.
>
> **Condition 20:** Up to six (6) charter vessels may utilize the dock, limited to up to six (6) passengers per vessel.
>
> **Condition 23:** No vessel longer than forty (40) feet, nor any vessel with a draft of more than three (3) feet shall be permitted to dock at the property

Planning Department:

The Planning Department, based on the criteria established by the Comprehensive Plan and the Land Development Regulations, recommends to the City Commission:

- **Condition 14:** Approval of the modifications proposed to Condition 14.
- **Condition 20:** That the proposed modification to Condition 20 to allow charter vessels be **denied** on the basis that it violates the Comprehensive Plan and Land Development Regulations.
- **Condition 23:** That the proposed modification to Condition 23 to allow vessels up to 40 feet in length be **denied**, on the basis that the applicant has not met the Code-required burden of proof in demonstrating that adverse impacts be avoided or mitigated, and on the basis that it may result in property damage to surrounding properties.

If the City Commission chooses to approve these requests, staff recommends the following conditions:

1. The applicant demonstrates through an annual shoreline impact analysis that the use does not result in shoreline erosion or property damage at properties along Hilton Haven Road and Gulfview Drive. This assessment shall be performed in accordance with the standards outlined in Section 122-126.
2. The applicant install "no wake/idle speed" signage in the area outside of the basin with uniform regulatory markers in accordance with applicable state and federal laws and regulations.

PLANNING BOARD
RESOLUTION NO. 2023-027

A RESOLUTION OF THE CITY OF KEY WEST PLANNING BOARD RECOMMENDING TO THE CITY COMMISSION APPROVAL OF A MAJOR MODIFICATION TO A MAJOR DEVELOPMENT PLAN AND CONDITIONAL USE FOR PROPERTY LOCATED AT 2407 N. ROOSEVELT BLVD (RE# 00002280-000100) IN THE CONSERVATION ZONING DISTRICT PURSUANT TO SECTIONS 108-91(C)(3), 122-63(E), AND 122-129 OF THE LAND DEVELOPMENT REGULATIONS OF THE CODE OF ORDINANCES OF THE CITY OF KEY WEST, FLORIDA.

WHEREAS, Section 108-91(c)(3) of the Code of Ordinances (the "Code") of the City of Key West, Florida (the "City") provides that modifications to Major Development Plans that exceed those treated as administrative or minor modifications shall be treated in the same manner as the original approval; and

WHEREAS, Section 122-63(e) provides that revisions or additions to a Conditional Use shall be reviewed based on the criteria of Section 122-62(b) and (c), and the procedures governing such reviews shall be identical to the procedures identified for the respective development plan which are presented in article II of chapter 108; and

WHEREAS, City Commission Resolution 2014-316 approved a Major Development Plan and Conditional Use to allow for the construction and use of a dockage located at 2407 N. Roosevelt Boulevard in the Conservation zoning district; and

WHEREAS, the subject property at 2407 N. Roosevelt Boulevard (RE# 00002280-000100), is more particularly described in the unity of title recorded in Book 3233, Page 920 of the official records of the Clerk of the Circuit Court of Monroe County, Florida, is located in the Conservation zoning district, and

Chairman

Planning Director

WHEREAS, the property owner has submitted a request to modify the conditions of the Major Development Plan and Conditional Use approval to allow the length of vessels permitted to utilize the dock facility to be increased from thirty (30) feet to forty (40) feet, and to allow for the regular mooring of charter vessels at the dock facility, and to confirm continuation of a legal nonconforming office use in the existing upland structure; and

WHEREAS, this matter came before and was recommended for approval with conditions by the Planning Board at a duly noticed public hearing on December 12, 2023; and

WHEREAS, the Planning Board finds that the granting of the proposed modifications to the Major Development Plan and Conditional Use is consistent with the criteria of the Code of Ordinances; and

WHEREAS, the Planning Board finds that the granting approval of the proposed modifications to the Major Development Plan and Conditional Use is in harmony with the general purpose and intent of the Land Development Regulations, and will not be injurious to the neighborhood, or otherwise detrimental to the public welfare.

NOW THEREFORE, BE IT RESOLVED BY THE PLANNING BOARD OF THE CITY OF KEY WEST, FLORIDA, AS FOLLOWS:

Section 1. That the above recitals are incorporated by reference as if fully set forth herein.

Section 2. That the Planning Board hereby recommends to the City Commission that the request to modify the Major Development Plan and Conditional Use approved pursuant to City Commission Resolution 14-316 be granted, subject to the following conditions:

The conditions of City Commission Resolution 14-316 are hereby amended and restated as follows (added language is underlined, deleted language is ~~struck through~~.):

WSM Chairman

KPH Planning Director

Conditions to be completed prior to the issuance of a building permit:

1. The Applicant receives all necessary permits from relevant State and Federal Agencies.
2. In addition to the existing on-site parking the Applicant shall make available twenty (20) exclusive parking spaces for use in association with the proposed development. Confirmation that said additional parking spaces are available for the proposed development shall be presented to the Planning Department prior to the issuance of any building permit, land clearing permit, or any permit required for physical furtherance of the proposed development. The City of Key West Attorney shall review any parking easement agreement between applicant and any property owner which is in furtherance of the above stated to ensure compliance with City of Key West Code Sec. 108-576(a).
3. If the construction project exceeds $500,000, the Applicant shall obtain approval of a Public Art Plan from the AIPP Board, pursuant to City Code Section 2-487, and may include payment of an in-lieu fee.
4. The Applicant shall obtain the proper permits for any trimming of mangroves during construction of the project.

Conditions to be completed prior to the issuance of a Certificate of Occupancy:

5. On-site artwork shall be installed and inspected by the City pursuant to Section 2- 487.
6. The Applicant coordinates with the U.S. Coast Guard to provide and maintain navigational markers from the docking basin to open water.
7. All lighting complies with "dark sky" or equivalent program on the docks themselves.
8. The Applicant will provide sewage pump-out facilities for all boats, with pump-out facility accessible 24 hours a day to all vessels of any length.
9. The Applicant shall provide the parking lot landscaping required by LDR Section 108-414(b) as evidenced by a landscape plan prepared by a licensed landscape architect and

Chairman

Planning Director

reflective of the conceptual design contained in the email to the Planning Department on July 8, 2014.

10. The onsite parking lot shall be striped and the driveway to said parking stalls, appropriately marked.
11. The clear site triangle for the accessory to North Roosevelt Boulevard shall be maintained clear of obstruction as per City Code.
12. The Applicant shall install the hose cabinets, standpipes and other fire suppression and alarms as required by the City Fire Marshall.
13. The parking lot on site shall be restriped to provide standard size stalls required by City Code, including two handicapped stalls.
14. There shall be no other commercial use of the marina area or parking lot, nor shall the development plan or conditional use authorize the change of the existing legally non-conforming uses to any other commercial use. The existing legally nonconforming office use on the property may be continued as office space for the dockage, subject to the restrictions in Condition 25 of this Resolution and in accordance with the Land Development Regulations.
15. There shall be no boat storage of any kind on the upland portions of the site inclusive of the parking lot.
16. The Applicant shall provide a fire department Hammerhead turn-around as required by code.
17. The Applicant shall provide a letter from structural engineer determining the hammerhead access road in close proximity of the water line can safely handle the total weight of our fire department trucks.
18. The Applicant shall provide a secondary emergency egress walkway for emergency purposes only, approved location and specifications are addressed in the Fire Access Site Plan (Sheet Number: C-7.0).

Conditions subject to a Conditional Approval Permit, per Ordinance 10-22 subject to an associated annual inspection:

Chairman

Planning Director

19. The applicant maintains a Florida Department of Environmental Protection Clean Marina Designation.
20. ~~There shall be no use of the marina for charter boats of any kind, including active or passive docking of charter vessels.~~ Use of the dock by charter vessel establishments shall be limited to a maximum of six charter vessels with a maximum of six passengers each.
21 There shall be no boat ramp, or automobile or hoist assisted boat launching of any type.
22. There shall be no storage of boat trailers on any part of the site, nor in any of the parking spaces on site, or in leased areas.
23. No vessel longer than ~~thirty (30)~~ forty (40) feet, nor any vessel with draft of more than three (3) feet shall be docked, or allowed to use the marina.
24. There shall be no slips outside the mangrove fringe (per revised site plans dated October 22, 2014).

General Conditions:

25. The total commercial floor area on the upland shall be reduced from 6,914 square feet to a maximum of 948 square feet, limited to use as office space for the dockage. This condition does not represent review or approval of physical modifications to the existing upland structure, but functions to confirm that the legal nonconforming office use has not been abandoned at this time.

Section 3. This resolution does not constitute a finding as to ownership or right to possession of the property, and assumes, without finding, the correctness of applicant's assertion of legal authority respecting the property.

Section 4. This resolution shall go into effect immediately upon its passage and adoption and authentication by the signatures of the presiding officer and the Clerk of the Commission.

Chairman

Planning Director

Read and passed on first reading at a regularly scheduled meeting held this 12th day of December, 2023.

Authenticated by the Chair of the Planning Board and the Planning Director.

Sam Holland, Planning Board Chair — Date: 1/3/24

Attest:

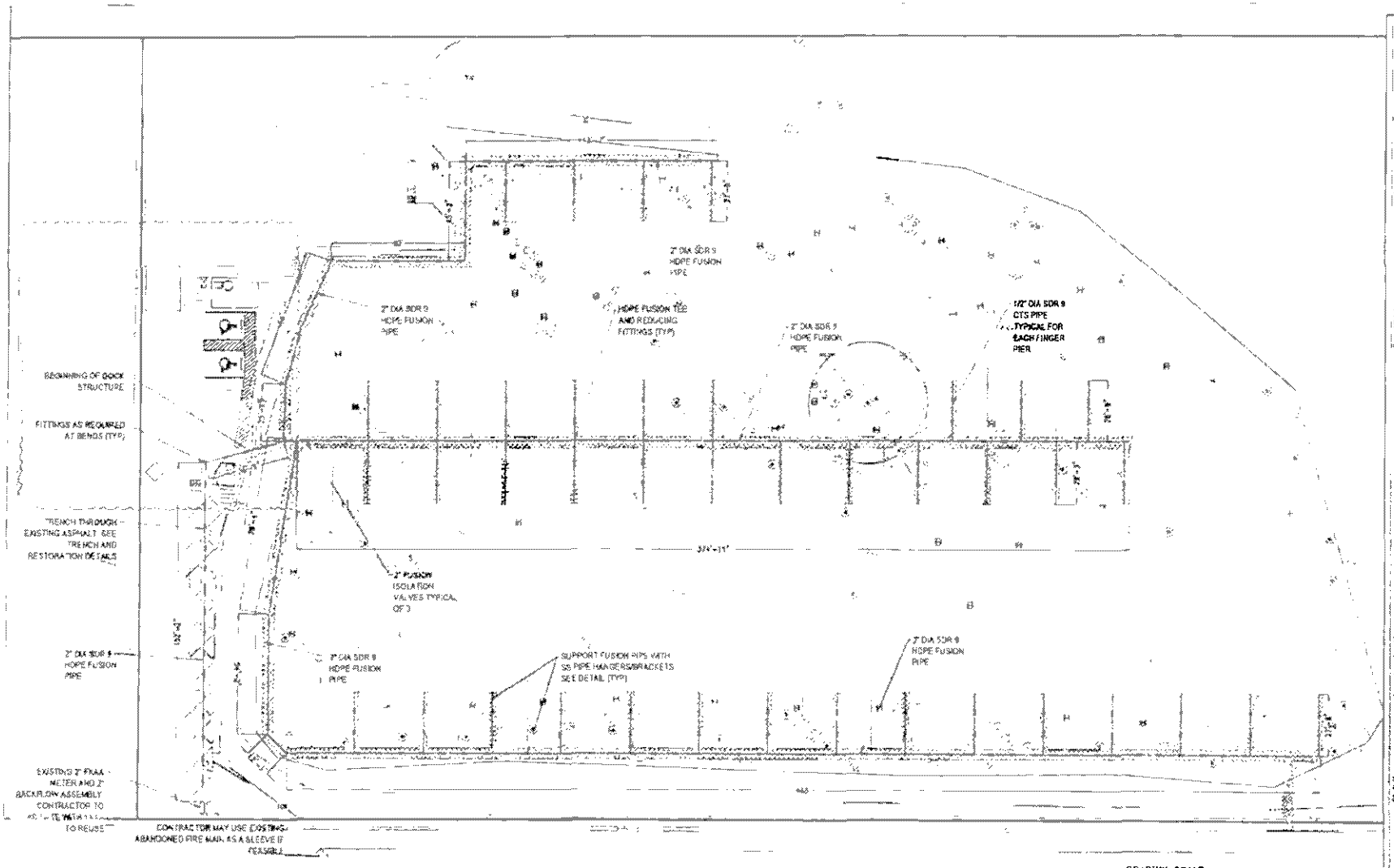
Katie P. Halloran, Planning Director — Date: 1/2/2024

Filed with the Clerk:

Ken O'Brien, City Clerk — Date: 1.2.2024

Chairman

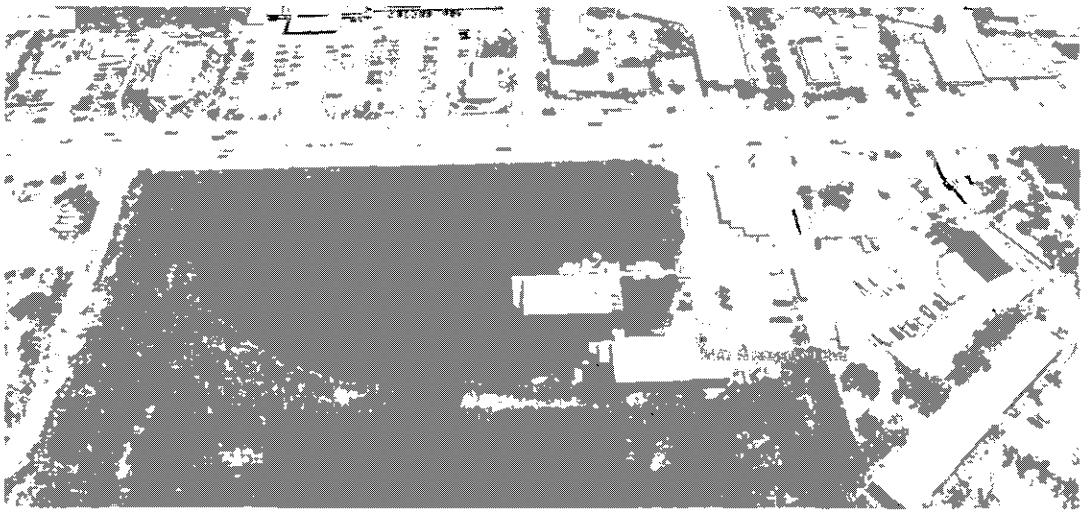
Planning Director


BEGINNING OF DOCK STRUCTURE
FITTINGS AS REQUIRED AT BENDS (TYP.)
"TRENCH THROUGH" EXISTING ASPHALT SEE TRENCH AND RESTORATION DETAILS
2" DIA SDR 9 HDPE FUSION PIPE
EXISTING 2" FKAA METER AND 2" BACKFLOW ASSEMBLY CONTRACTOR TO
TO REUSE
CONTRACTOR MAY USE EXISTING ABANDONED FIRE MAIN AS A SLEEVE IF FEASIBLE
2" DIA SDR 9 HDPE FUSION PIPE
2" DIA SDR 9 HDPE FUSION PIPE
HDPE FUSION TEE AND REDUCING FITTINGS (TYP)
2" DIA SDR 9 HDPE FUSION PIPE
1/2" DIA SDR 9 CTS PIPE TYPICAL FOR EACH FINGER PIER
2" FUSION ISOLATION VALVES TYPICAL OF 3
SUPPORT FUSION PIPE WITH SS PIPE HANGERS/BRACKETS SEE DETAIL (TYP)
2" DIA SDR 9 HDPE FUSION PIPE
PROPOSED
GRAPHIC SCALE
MARINA
POTABLE WATER PLAN
C-2.0

THE CITY OF KEY WEST
PLANNING BOARD
Staff Report

To:	Chairman and Planning Board Members
Through:	Katie P. Halloran, Planning Director
From:	Jordan Mannix-Lachner, Planner II
Meeting Date:	November 16, 2023
Application:	**Major Modification to a Major Development Plan and Conditional Use Approval – 2407 N. Roosevelt Boulevard (RE# 00002280-000100)** – A request for a Major Modification to a Major Development Plan and Conditional Use Approval to modify conditions approval to allow for the inclusion of charter vessels, vessels up to forty feet in length, and changes in upland land uses at a marina on property located at 2407 North Roosevelt Boulevard in the Conservation zoning district, pursuant to Section 108-91(C) of the Code of Ordinances of the City of Key West.

Request:	The applicant is requesting to modify the conditions of City Commission Resolution 2014-326, to allow for the inclusion of charter vessels, vessels up to forty feet in length, and changes in upland land uses at a marina on property located at 2407 North Roosevelt Boulevard
Applicant:	Richard McChesney of Spottswood, Spottswood, Spottswood & Sterling, PLLC
Property Owner:	2407 N. Roosevelt, LLC
Location:	2407 N. Roosevelt Boulevard (RE# 00002280-000100)
Zoning:	Conservation zoning district

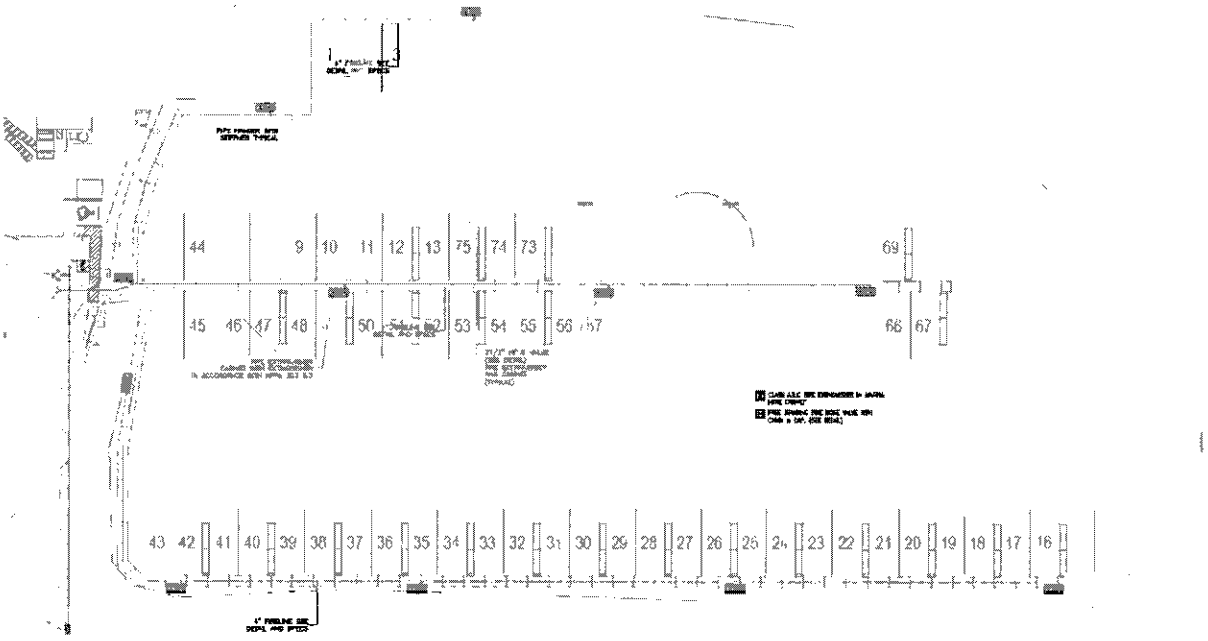


***NOTE:** This report has been updated to correct an error, and to include additional comments received from development review staff and neighboring property owners. The previously published staff report referenced several times that the applicant is requesting approval for vessels up to 35 feet in length. That is incorrect; the applicant is requesting approval for vessels up to 40 feet in length.**

Background:

City Commission Resolution 14-316 approved a Major Development Plan and Conditional Use to allow for the construction of a dockage with 79-berths in a tidal water basin at property located at 2407 N. Roosevelt Blvd (RE# 00002280-000100.) The property is located in the Conservation zoning district. The basin consists of Outstanding Waters of the State.

The parcel includes approximately four acres of tidal waters fringed by mangroves, and approximately 27,000 square-feet of upland area. A 10,000 square-foot mixed-use structure sits on the upland, adjacent to the mangrove fringe. When the development plan was approved in 2014, the upland building was occupied by various medical and professional offices and two dwelling units. The basin contained a one-story structure over water on pilings. The structure sat on a separately owned parcel (RE# 00002280-000101) which was not included in the development plan or conditional use approval. The building housed professional offices.



Dock Layout.

A building permit for the dock was obtained in 2017. Construction of the docks stalled for several years. New owners purchased the property in 2022, as well as the parcel containing the over-water building. Construction of the docks re-commenced with a modified layout, and the over-water building was demolished. The upland building was vacated. A final inspection for the dock permit was completed in September 7, 2023. The building demolition and dock reconfiguration was reflected in a minor modification application that was reported to the Planning Board at the October 19, 2023 meeting. The applicant has also

submitted a building permit for the installation of 68 hydraulic boat lifts on dock slips.

The applicant obtained a Temporary Certificate of Occupancy for the dock on October 4, 2023. Pursuant to Conditions 3 and 5 of Resolution 14-316, the applicant must obtain a Public Art Plan approval from the Art in Public Places Board and have the art installed and inspected prior to issuance of a Certificate of Occupancy. The applicant should coordinate with the Art in Public Places program to ensure these requirements are met prior to issuance of a final Certificate of Occupancy.

Proposed Modifications

The applicant is requesting to modify conditions 14, 20, and 23 of City Commission Resolution 14-316, as described below:

Existing Conditions per Res. 14-316	Conditions Proposed by Applicant
Condition 14: There shall be no other commercial use of the marina area or parking lot, nor shall the development plan or conditional use authorize the change of the existing legally non-conforming uses to any other commercial use.	**Condition 14:** There shall be no other commercial use of the marina area or parking lot, nor shall the development plan or conditional use authorize the change of the existing legally non-conforming uses to any other commercial use, unless an application for a change of nonconforming use is submitted. Accessory uses to the marina shall be permitted.
Condition 20: There shall be no use of the marina for charter boats of any kind, including active or passive docking of charter vessels.	**Condition 20:** The marina shall have no more than six (6) charter vessels at a maximum of six (6) passengers for active or passive docking.
Condition 23: No vessel longer than thirty (30) feet, nor any vessel with a draft of more than three (3) feet shall be docked, or allowed to use the marina.	**Condition 23:** No vessel longer than forty (40) feet, nor any vessel with a draft of more than three (3) feet shall be docked, or allowed to use the marina.

Resolution 14-316 authorized a major development plan, conditional use, and landscape waiver. Major development plans are required for the addition of 5,000+ square feet of active recreation space or commercial activity. The conditional use is required to allow for a dockage. The proposed modifications relate to the *use* of the dockage. Therefore, this application is being reviewed with regard to both the major development plan and conditional use approvals.

Zoning

The subject property is located in the Conservation zoning district. Code Section 122-128 states that "All development within the conservation district shall be by conditional use due to the environmental sensitivity of lands within the conservation district."

Section 122-129 provides conditional use criteria for the Conservation zoning district. It states (emphasis added):

> "applicants for a conditional use **must** demonstrate that the proposed uses and facilities identified in this section are compliant with all applicable criteria and relevant mitigative measures for conditional use approval, including but not limited to wetland preservation, coastal resource impact analysis and shoreline protection, protection of marine life and fisheries, protection of flora and fauna, and

floodplain protection. The design of proposed conditional use facilities **shall** be required to apply mitigative measures to prevent and/or minimize adverse impacts on natural systems, including but not limit to habitats, water quality, and the physical and biological functions of wetlands. The size and scale of such development **shall** be restricted. The proposed uses and facilities that **shall** be compliant with all applicable criteria and relevant mitigative measures for conditional use approval are as follows:"

Section 122-129 provides for conditional uses based on whether the proposed use is above or below the mean high water line. The subject proposal relates to the use of facilities below the mean high water line.

Below mean high water, conditional uses include the following water-dependent facilities:

a. Fishing piers, docks and related boardwalks not exceeding a width of five feet; and
b. Watercraft

Above mean high water, conditional uses include boardwalks, hiking trails, picnic areas, observation towers, and low-density residential development.

In reviewing the proposed modifications, Planning staff has considered the Conservation zoning district regulations described above, in addition to other relevant Code sections.

Analysis of Proposed Modification to Condition 14

The existing Condition 14 restricts the expansion of commercial use associated with the dockage. It also specifies that the development plan and conditional use approval does not authorize the change of existing legally nonconforming use. The effect of Condition 14 is that the commercial uses associated with the dockage are not expanded to the point that the facility operates as a marina, which is a prohibited use in the subject district. Additionally, the Code provides that legally nonconforming uses may be changed to another nonconforming use, with Planning Board approval. By prohibiting the change of legally nonconforming uses to any other commercial use, the resolution restricted the ability to change the nonconforming office uses to nonconforming marina uses.

The applicant's proposed modification to Condition 14 removes these restrictions and allows for accessory "marina" uses throughout the site.

Section 122-1181 states: "Accessory uses or structures shall be permitted by right in a subject district if the principal use is a permitted use; however, the accessory use or structure shall be a conditional use if the principal use is a conditional use."

Given that marinas are not a conditional use in the subject district, the Code cannot permit accessory uses to a marina; the uses must be accessory to a "dockage," and they must be approved through the conditional use process.

Section 122-62 states that "a conditional use shall be permitted upon a finding by the Planning Board that the proposed use ... [complies] with the criteria specified in this section." It further requires that conditional use applications clearly describe specific characteristics of the proposed use, which shall be reviewed to ensure that the proposed use does not result in adverse impacts. There are additional conditional use criteria for land uses within a conservation area.

The subject application does not propose or specify a specific accessory use, therefore it is not possible to review the characteristics of the proposed use and determine whether it complies with the review criteria set

forth in the Code. Therefore, staff cannot support a modification to Condition 14 that includes the sentence "Accessory uses to the marina shall be permitted."

According to licensing records, the legally nonconforming uses in the upland building that have not been abandoned as of October 2023 include a massage studio and a medical office.

In an email dated October 31, 2023, the applicant stated that the property owner is contemplating an upland dock office, with storage space for lessees of the dockage. In accordance with Section 122-30, the applicant may continue the legally nonconforming office use of the upland structure, so long as the use has not been abandoned. Staff's position is that the office may contain storage space for use by the property owner and guests, but the commercial rental of storage space to customers exceeds the scope of the existing nonconforming office uses.

Analysis of Proposed Modification to Condition 20

Condition 20 of Resolution 14-316 prohibits the docking of charter vessels. The applicant is requesting a modification to the conditions of approval to allow for the dockage of up to six charter vessels, each with a capacity of up to six passengers.

The existing prohibition on charter vessels reflects the provision in Code Section 122-1186, which stipulates that charter boats are only permitted to be regularly moored at duly licensed marinas. Section 89-6 defines a marina as "a commercial establishment providing for the docking, storage, and servicing of watercraft, including dispensing of motor fuel."

Marinas are neither a permitted nor conditional use in the Conservation zoning district. Resolution 14-316 authorized a "dockage" which is consistent with the Conservation zoning district's conditional use regulations and Section 1212-130, which states that "All uses not specifically or provisionally provided for in this division are prohibited in the conservation district." Section 110-186 of Chapter 110: Resource Protection also provides that no new marinas shall be allowed in or adjacent to outstanding Florida waters, marine sanctuaries, or areas of essential manatee habitat, all of which are within or adjacent to the subject property.

Therefore, the applicant's request to allow for the dockage of six charter vessels is prohibited under Code, as marinas are prohibited at the subject property.

In an email to the City Attorney sent on November 28, 2023, the applicant stated that the project was approved as a marina, and that the conditions of Resolution 14-316 include references to a marina.

If a marina was in fact a legally nonconforming use on the property, the applicant's request would be prohibited under Section 122-32, which states that a nonconforming use shall not be extended, expanded, enlarged, or increased in intensity in intensity. The addition of charter boats would constitute an unlawful increase in intensity and expansion of a nonconforming use.

However, Planning staff maintains that a marina is not a legally nonconforming use on the site, and that the use of the word "marina" in the conditions was erroneous. Marinas are prohibited in the subject district, which is consistent with the resolution's approval of a "dockage." Furthermore, when the word "marina" is used in Resolution 14-316, it is not used to explicitly or implicitly authorize a marina. On the contrary, it deliberately restricts the more intense uses that are consistent with a marina.

The title of Resolution 14-316 states (emphasis added): "A resolution of the City Commission of Key West, Florida granting Major Development Plan, Conditional Use, and Landscape Waivers... to construct a **dockage**

with 79 berths." The resolution further states "Whereas, the applicant proposed construction of a **dock system** with 79 berths..." Finally, the resolution states "Now therefore be it resolved... that the City Commission grants approval of the application for Major Development Plan, Conditional Use, and Landscape Waiver for the construction of **79 berths** on property located at 2407 N. Roosevelt Boulevard..."

The word "marina" is included in Conditions 14, 20, and 23, which restrict charter use, vessel size, and the change/expansion of commercial use on the site:

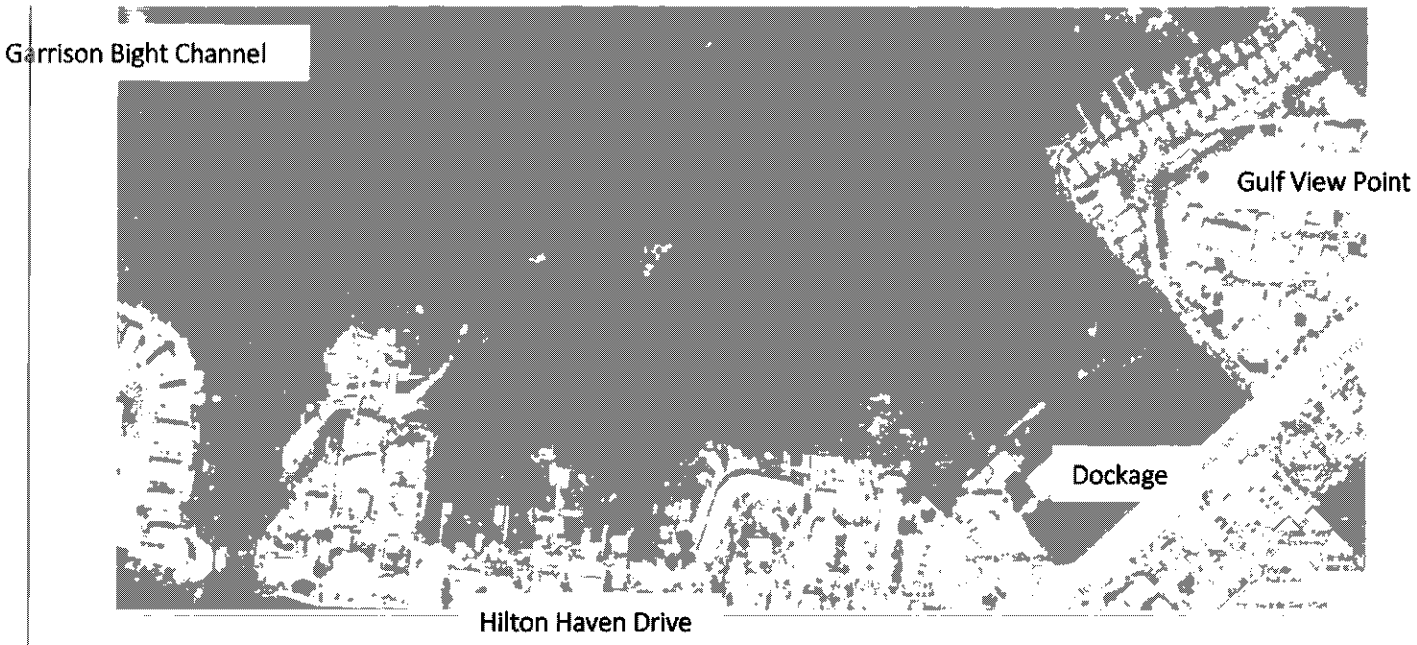
- Condition 14 prohibits the change of existing nonconforming uses, which ensures that the change of nonconforming use provisions in Section 122-32 would not be used to allow for the addition of services and facilities that would result in the creation of a marina.
- Condition 20 specifically prohibits charter vessels, which are allowed in licensed marinas, but not in the subject district.
- Conditions 23 restricts the size of vessels, which mitigates adverse impacts to marine life and coastal resources in conformance with Conservation district regulations which provide that conditional use facilities shall be required to apply mitigative measures to prevent and/or minimize adverse impacts on natural systems.

Because charter vessels are only permitted in duly-licensed marinas and marinas are prohibited at the subject property, the Planning Department cannot recommend approval of the proposed modification to Condition 20. The Planning Department advises that approval of the proposed modification is prohibited under the Code.

Analysis of Proposed Modification to Condition 23

Condition 23 restricts the maximum vessel length to 30 feet. The applicant proposes a maximum vessel length of 40'. Vessels of this length are authorized under the project's Florida Department of Environmental Protection and Army Corps of Engineer permits.

Upon initial review, Planning staff did not object to the request to increase the maximum vessel length. Subsequently, the Planning Department received a public comment from the Gulf Pointe Homeowners Association. Gulfview Pointe is located is a townhome development located directly to the east of the subject property. In addition to other concerns, the Gulfview Pointe HOA objected to the increase in vessel length due to the increased potential for adverse impacts to water quality, marine habitat, and shoreline erosion.



Planning staff conducted additional analysis in response to this concern and found that larger vessels (and associated increase in the strength and number of engines on a vessel) may indeed increase the potential for adverse impacts to adjacent shorelines as well as living marine resources and water quality.

The Land Development Regulations require that applicants for development along coastal shorelines shall be required to demonstrate how the development protects against adverse impacts to environmental resources including shoreline stabilization. Furthermore, Conservation district regulations provide in Section 122-126 that applicants for development "shall bear the burden of proof" in showing that the development appropriately mitigates and minimizes adverse impacts to environmental and coastal resources.

The applicant has not provided a coastal impact assessment that demonstrates that the increase in vessel length would not result in adverse impacts to environmentally sensitive resources and shoreline erosion.

However, scientific literature indicates that boat wake energy is influence by vessel length, water depth, and boat speed[1]. In turn, boat wakes are known to erode shorelines, scour the seafloor, and increase turbidity that harms marine life. NOAA Nautical Charts show that the mean low water depth is three feet in the waters adjacent to the subject property. Vessels with drafts up to three feet are permitted to utilize the dock. Relatively shallow depth requires larger vessels to get "on plane" quickly, which requires higher speeds. When viewed together, this suggests that the applicant's request would increase boat wake energy, thus increasing the risk of shoreline erosion, turbidity, and harm to water quality and marine life.

Planning staff provided the applicant with the HOA's objection letter and inquired as to whether the applicant would provide a response to the objections related to boat wake impacts. The Planning Department has not received a response from the applicant.

Therefore, staff finds that the applicant has not met the burden of proof in determining that the proposed

[1] Glamore, W. C. (2008, February). A decision support tool for assessing the impact of boat wake waves on inland waterways. In International Conference on Coastal and Port Engineering in Developing Countries (No. 1, p. 20).

modifications appropriately mitigate adverse impacts. As a result, staff cannot recommend approval of the proposed modification to Condition 23.

Utilities Comments

The Utilities Department provided the following comments regarding the application:

1. Utilities would like to confirm sanitary sewer facilities will be available for the proposed all vessels leasing a slip, including the charter boats. Please request that the applicant provide a sanitary sewer plan that shows the sanitary sewer pump out connection(s) for the marina.
2. Please request that the applicant provide a site plan that shows the location for solid waste storage, i.e., dumpster(s). Solid waste storage shall be screened from public ways, pursuant to Sec. 108-279.

The applicant was responsive to the request for information from Utilities. No further information was requested.

Urban Forestry Comments

The Urban Forester provided the following comments regarding Condition 23: While newer, faster boats have longer beams with a shallow draft, the engines on these types of boat may result in increased noise impacts to adjacent areas and on the force pressure of the engines on the benthic environment. Many of these larger boat with shallow draft have 3-4 engines on them.

Public Comments

As mentioned previously, the property owner's association for Gulf View Point has submitted a letter in response to the proposed modification. The association opposes the proposed modification, and is particularly concerned about the environmental impact, and the impact of wave action on shoreline stability and erosion. The full letter is attached to the Planning Board agenda.

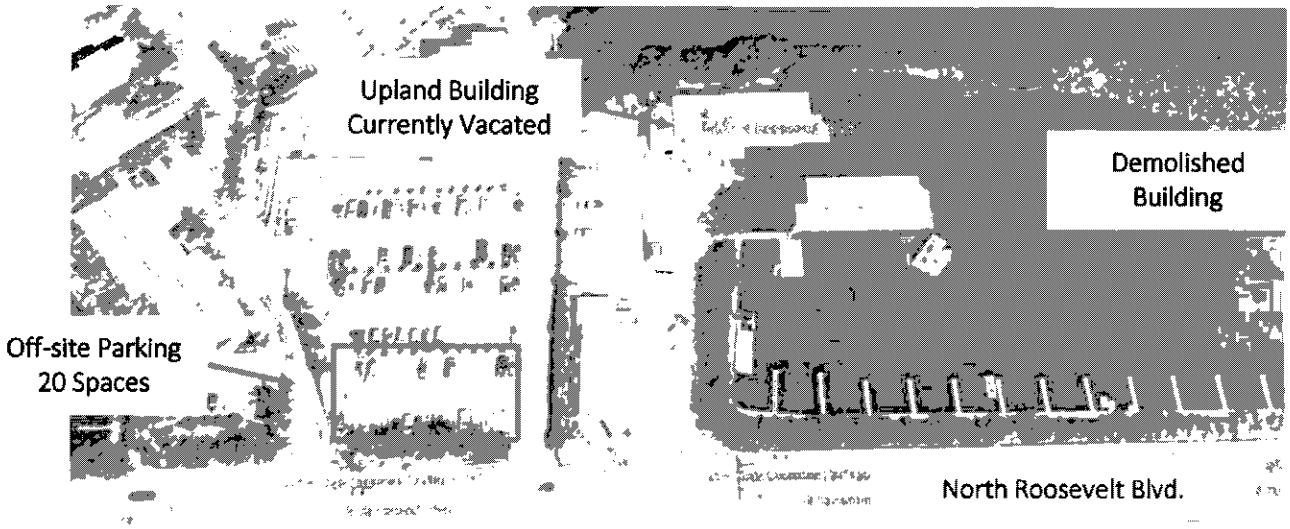
A letter of objection was also submitted by Barton Smith of Smith Hawks Law Firm on behalf of a neighboring property owner, Banana, LLC. The substantive objection is that the modification would eliminate underlying conditions and reliance upon which the existing development plan was granted. The full letter is attached to the agenda.

Parking Analysis

The required parking for the dockage and two residential units consists of 32 vehicle spaces and eight bicycle spaces. The development meets the vehicle parking requirements with 12 on-site parking spaces and 20 off-site parking spaces. The off-site spaces are located in the parking lot of the Capitana and are subject to an exclusive easement. The easement A 60-foot-wide parcel owned by the Lion's Club sits between the subject property and the off-site parking. The applicant does not hold an access easement to allow customers to traverse the property. This requires customers parked in the off-site space to traverse the sidewalk on North Roosevelt to enter the property. Staff noted on a site visit that a "desire path" has formed in the vegetated/landscaped buffer between the Capitana parking lot and the Lion's Club property.

The bicycle parking requirement is eight spaces. The site plan associated with the building permit BLD2023-1299 reflects three bicycle parking spaces. In an email on November 15, 2023, the applicant agreed to provide eight bicycle parking spaces.

The proposed parking is sufficient to accommodate the parking requirements of the marina slips and the residential units. Any changes in commercial use resulting from the proposed modification to Condition 14 may trigger additional parking requirements. If additional parking is needed but cannot be accommodated onsite or through a linkage agreement, a variance would be required.



Parking Table		
Use	Code Required	Proposed
Dockage – 69 Recreational Slips *1 space per 4 slips*	18 vehicle spaces 5 bicycle spaces	18 vehicle spaces
Dockage – 6 Commercial Slips *1 space for every 3 passengers (based on vessel capacity)*	12 vehicle spaces 3 bicycle spaces	12 vehicle spaces
Residential Units – 2 Units *1 space per unit*	2 vehicle spaces	2 vehicle spaces
Proposed Accessory Uses to Dockage	Unknown	Unknown
Total	**32 vehicle spaces** **8 bicycle spaces**	**32 vehicle spaces** **3 bicycle spaces**

Surrounding Zoning and Uses:

North. Conservation – Outstanding Waters
Uses: Conservation/None (open waters)
East. Conservation – Mangroves & Medium Density Residential
Uses: Conservation, Multi-family residential
South. General Commercial
Uses: Commercial retail, storage facility, vehicle rentals
West. General Commercial
Uses: Civic activities, transient lodging

Process:

Planning Board:	November 16, 2023
City Commission:	TBD
Local Appeal Period:	10 Days
Planning renders to DEO for review:	Up to 45 days

Staff Analysis – Evaluation for Compliance with the Land Development Regulations: Major Development:

Section 108-91(C)(3) states that development plan modifications that exceed the scope of minor and administrative modifications shall be treated in the same manner as the original approval. Section 108-91(C)(4) provides that changes to specific conditions of approval shall require approval by the body that originally approved the development plan. Section 108-91(D)(1-2) states that for development not fitting within the minor and major development plan and development plan modification categories outlined in 108-91, "the city planner shall determine the appropriate review process after considering similarity, complexity of the development, impacts on the demand for city services, and the potential for adverse impact(s) upon neighboring areas... In applying the criteria set forth herein, all phases of the total project or development shall be considered. In determining the appropriate level of review, the city planner may aggregate previous development completed within two years of a new application."

Based on the provisions described above, along with conversations with the applicant and City Attorney, the City Planner has prescribed a review process for this application. The review process shall begin with review by development review staff, followed by a recommendation from the Planning Board, and final approval by City Commission.

Code Criteria

Section 108-233: Concurrency Facilities and Other Utilities or Services

Comprehensive Plan Objective 9-1.5 directs the City to ensure that public facilities and services needed to support development are available concurrent with the impacts of new development. The analysis considers potable water, sanitary sewer, solid waste, drainage, roadway level of service and recreation. City Code Section 94-36 requires a concurrency review determination to be made concerning the proposed development.

1. Potable water supply

The proposal to allow for accessory uses to the marina on the upland, along with changes in nonconforming uses on the site, may increase demands on potable water supply. The applicant has not provided an analysis of the proposal's impact on potable water supply. Staff cannot anticipate the impact of other unknown accessory uses or other commercial uses on-site. There is no anticipated significant change in the potable water supply demands as a result of the proposal to allow charter vessels and vessels up to 40' in length.

2. Wastewater management

The proposed inclusion of commercial charter vessels may increase demand on wastewater needs accommodated by the sewer pump-out for vessels. The applicant stated that the pump-out has a capacity of 50 gallons per minute, which is sufficient to accommodate the typical 15-gallon capacity

of waste tanks on vessels under 40'.

3. Water quality
The marina is located in the Conservation zoning district. The applicant has not provided an analysis of how the proposed changes will impact water quality.

However, the addition of charter vessels and larger vessels with more powerful engine systems will increase turbidity in the waters within and adjacent to the subject property. Increased turbidity reduces water quality and adversely impacts marine life in several ways.

Section 122-129 states that the design of conditional uses within the Conservation district shall mitigate adverse impacts on natural systems including habitat and water quality. The limitation on the length of vessels and the restriction against charter vessels is a mitigative measure to reduce these adverse impacts. Eliminating those restrictions would be inconsistent with Conservation zoning district regulations and Chapter 110: Environmental Resources.

4. Stormwater Management/Drainage
No impacts to stormwater management and drainage plans are anticipated. Staff has observed standing water associated with high tides on a significant portion of the subject property during October 2023. Staff recommends that any drainage modifications be submitted to the City to ensure compliance with state and federal laws.

5. Solid waste
The applicant shall coordinate with Waste Management for the disposal of solid waste.

6. Roadways
No change is anticipated.

7. Recreation
No change is anticipated.

8. Fire Protection
No change is anticipated.

9. Reclaimed water system
No change is anticipated.

10. Other public facilities
No change is anticipated.

Section 108-232:Intergovernmental coordination
The applicant has obtained FDEP and Army Corps permits allow for the proposed changes to vessel length and the addition of charter boats.

Section 108-234: Appearance, design and compatibility:
The development plan modification must satisfy criteria established in Chapter 102; Articles III, IV and V of Chapter 108; Section 108-956; and Article II of Chapter 110 of the Key West City Code in the following manner:

- **Chapter 102- Historic Preservation:** The subject property is not located within the Historic District.

- **Articles III, IV and V of Chapter 108** – No site plan changes are proposed as part of this modification.

- **Section 108-956 – Potable water and wastewater:** – The applicant shall coordinate with FKAA to ensure access to potable water and a wastewater disposal system.

- **Chapter 110 – Resource Protection:** The applicant has obtained all necessary FDEP and Army Corps approvals for the proposal. The applicant shall comply with the provisions of the FDEP Clean Marina program.

  No site alterations are proposed. However, the applicant proposes an increase in intensity of commercial use on the property which is located in the Conservation zoning district and contains and is adjacent to environmentally sensitive lands.

  Section 110-186 requires that marina development plans include an environmental impact component. The original development plan did not anticipate the impact of the proposed modifications, and no environmental impact analysis has been provided in this application.

  Staff cannot fully anticipate the effect of the proposed modifications on environmental, coastal, soil, and water resources. However, the modifications are likely to increase rather than mitigate any adverse impacts of boat activity on environmental and coastal resources.

  The current development approval restricts any changes in use on the upland portion of the property, including accessory uses like boat maintenance. The proposed modifications would eliminate that restriction. In accordance with Section 110-186, boat maintenance activities in new or expanded marina facilities shall be located as far as possible from open waterbodies in order to reduce contamination of waterbodies, and runoff from boat maintenance must be collected and treated prior to discharge. Staff would like to clarify that approval of the proposed modification to Condition 14 would not relieve the property owner of the requirement to comply with any applicable land development regulations that regulate particular uses. For example, if the property owner seeks to provide boat maintenance activities, they may be required to obtain additional permits and approvals from the City or other agencies prior to engaging in those uses.

Section 108-235: Site location and character of use

The proposed modifications are not anticipated to adversely affect neighboring commercial uses. However, the site is located in and adjacent to the Conservation zoning district, and marinas and the regular mooring of charter vessels are prohibited. Therefore, the proposed modifications to Conditions 14 and 20 do not comply with the criteria identified in Section 108-325.

Additionally, the addition of charter vessels would likely result in increased intensity, trip generation, and impacts on water quality because charter vessels generally operate on a daily basis, often with multiple trips per day. In contrast, recreational vessels are generally used less frequently and result in lower intensity impacts.

Section 108-236: Appearance of site and structures

No site alterations are proposed as part of this application.

Section 108-237: Site plan

No site alterations are proposed as part of this application. Any site alterations necessary to pursue proposed accessory uses must be approved pursuant to the land development regulations.

Section 108-238: Architectural drawings
No physical alterations are proposed as part of this application. The applicant has stated that demolition and reconstruction of the upland structure will be proposed in the near future.

Section 108-239: Site amenities
No specific site amenities are identified in this application.

Section 108-240: Site survey
The applicant provided an updated site survey.

Section 108-241: Soil survey
No soil survey was provided.

Section 108-242: Environmentally sensitive areas
The project is located in an environmentally sensitive area and includes wetlands and open water. The site is located in and adjacent to the Conservation zoning district, and marinas and the regular mooring of charter vessels are prohibited. The applicant has not provided an analysis of the environmental impact of the proposed modifications. The applicant has obtained necessary permits from federal and state agencies to allow for charter vessels and vessels 40' in length.

Section 108-243: Land clearing, excavation and fill, tree protection, landscaping and irrigation plan.
No site alterations are proposed as part of this application.

Section 108-244: On-site and off-site parking and vehicular, bicycle, and pedestrian circulation
The applicant proposes to comply with parking requirements using on-site parking, as well as an exclusive easement agreement for 20 parking spaces at 2401 N. Roosevelt Boulevard. There is no pedestrian pathway from the off-site parking to the docks, except via an exit to the North Roosevelt Boulevard sidewalk. Staff strongly recommends an easement and walkway to be pursued and constructed.

Section 108-245: Housing
The site contains two recognized residential dwelling units in the upland structure. No changes are proposed as part of this application.

Section 108-246: Economic resources
The proposed project does not anticipate a yield to ad valorem taxes.

Section 108-247: Special Considerations

a) The relationship of the proposed development to the City's land use plans, objectives and policies is being evaluated as part of this analysis. The marina basin includes seagrass beds and marine life which are sensitive to increased turbidity and other forms of pollution and water runoff. Comprehensive Plan Policy 5-1.1.4 provides that these impacts shall be regulated through effective water quality management criteria, including coordination with state agencies having jurisdiction. The applicant has obtained necessary approvals from state agencies. The increase in vessel length and the addition of charter boats may increase adverse impacts on marine life and shoreline stability.

b) The project is located within the Coastal High-Hazard Area as defined by Policy 5-1.5.2:

Definition of the City of Key West Coastal High-Hazard Area.

c) No unincorporated portions of the county would be impacted by the proposed development.
d) The project fronts a shoreline. No shoreline alterations are proposed that would impact shoreline access.
e) No special facilities are proposed to accommodate bus ridership.
f) Passive recreation space is not identified in the application.
g) Coordination with applicable agencies has occurred as evidenced by approved FDEP and Army Corps permits.
h) Necessary permits have been obtained from FDEP and the Army Corps.

Section 108-248: Construction management plan and inspection schedule
No construction is proposed.

Site plan (City Code Chapter 108, Article III)
The City shall not approve a site plan unless a finding is made that such site plan conforms to all applicable sections of the LDRs, pursuant to City Code Section 108-276.

Section 108-279: Location and screening of mechanical equipment, utility hardware and waste storage areas
No change to the approved site plan is proposed as part of this application. Utilities staff have noted City requirements to screen waste areas and receptacles.

Section 108-280: Front-end loaded refuse container location requirements
No change to the approved site plan is proposed as part of this application.

Roll-off compactor container location requirements (City Code Section 108-281)
No change to the approved site plan is proposed as part of this application.

Utility lines (City Code Section 108-282)
No change to the approved site plan is proposed as part of this application.

Commercial and manufacturing activities conducted in enclosed buildings (City Code Section 108-283)
None proposed.

Exterior lighting (City Code Section 108-284)
In accordance with Resolution 14-316, all lighting must be directional and/or shielded from the surrounding streets in accordance with a "dark sky" program.

Section 108-285: Signs
No changes are proposed.

Section 108-286: Pedestrian sidewalks
No change to the approved site plan is proposed as part of this application.

Section 108-287: Loading docks
No change to the approved site plan is proposed as part of this application.

Section 108-288: Storage areas
No change to the approved site plan is proposed as part of this application.

Chapter 108, Article VI: Landscaping
No change to the approved site plan is proposed as part of this application.

Chapter 108, Article VII: Off-street parking and loading
No change is proposed as part of this application. Any change in use pursued as a result of the proposed modification must meet off-street parking and loading requirements.

Chapter 108, Article VIII: Stormwater and surface water management
No change is proposed as part of this application. Any accessory uses pursued as a result of this proposed modification must meet stormwater and surface water management requirements of the land development regulations.

Utilities (Code Chapter 108, Article IX)
No change is proposed as part of this application.

Art in Public Places (City Code Section 2-487)
The applicant submitted a payment-in-lieu for the Art in Public Places program.

End of major development plan review.

Conditional Use Analysis:

Section 122-62: Specific Criteria for Approval

Findings: The Planning Board may find that the application meets the Code purpose of ensuring that "a conditional use shall only be permitted on specific sites where the proposed use may be adequately accommodated without generating adverse impacts on properties and land uses within the immediate vicinity."

The following criteria form the basis for a finding of compliance.

Characteristics of Use Described:

1. Scale and Intensity
   a. Floor Area Ratio (FAR):
      No change in Floor Area Ratio is proposed as part of this application.

   b. Traffic Generation:
      It is not expected that the proposed modification will result in trip generation that exceeds LOS standards.

   c. Square Feet of Enclosed Building for Each Specific Use:
      The applicant has not identified the characteristics or location of specific uses that would be permitted if the proposed modifications are approved.

   d. Proposed Employment
      This information was not provided.

   e. Proposed Number of Service Vehicles:

This information was not provided.

f. **Off-Street Parking:**
The applicant will provide 32 off-street parking spaces.

2. On or Off-site Improvements Required and Not Listed in Subsection (b)(1)

1. **Utilities:**
No change is proposed as part of this application. Staff has requested the applicant confirm that required pump-out station has sufficient capacity to handle the additional demand that would result from the addition of six charter vessels.

2. **Public facilities:**
Staff does not anticipate the proposed modifications will result in additional demand on public facilities.

3. **Roadway or Signal Improvements:**
None proposed.

4. **Accessory Structures or Facilities:**
No accessory structures are proposed as part of this application.

5. **Other Unique Facilities/Structures Proposed as Part of On-Site Improvements:**
None proposed.

3. On-Site Amenities Proposed to Enhance the Site and Planned Improvements.

a. **Open Space:**
No change to the approved site plan is proposed as part of this application.

b. **Setbacks from Adjacent Properties:**
No change to the approved site plan is proposed as part of this application.

c. **Screening and Buffers:**
No change to the approved site plan is proposed as part of this application.

d. **Landscaped Berms Proposed to Mitigate Against Adverse Impacts to Adjacent Sites:**
No change to the approved site plan is proposed as part of this application.

e. **Mitigative Techniques for Abating Smoke, Odor, Noise, and Other Noxious Impacts:**
None proposed.

122-62(C): Criteria for Conditional Use Review and Approval: Applications For a Conditional Use Review Shall Clearly Demonstrate the Following:

1. **Land Use Compatibility:**
Docks are one of the only conditional uses for areas below the mean high-water line in the Conservation zoning district. Marinas, however, are not a permitted or conditional use in the

Conservation zoning district. There are no commercial uses that are either permitted-by-right or as a conditional use in the Conservation zoning district. Therefore, any changes that increase or expand commercial activity on the site are not compatible with the land use regulations for the subject district.

As indicated in public comments, the increased wave action caused by larger vessels and the more regular activity of charter vessels may be incompatible with surrounding residential uses.

2. **Sufficient Site Size, Adequate Site Specifications and Infrastructure to Accommodate the Proposed Use:**

   The physical characteristics of the dock basin and minimum depth requirements of the LDRs and Comprehensive Plan restrict the draft of vessels to three feet. The application states that the marine industry has made technological advancements since the time of the development plan approval which allow for larger boats to decrease their potential draft, suggesting that the basin can accommodate larger boats while meeting the three-foot draft requirement.

   Staff cannot confirm whether the site contains the utility infrastructure to accommodate charter vessels; further information about the capacity of the pump-out is required. Staff cannot anticipate whether the site is adequate to accommodate the accessory uses and other potential commercial uses on-site without a description of the uses.

3. **Proper Use of Mitigative Techniques:**
   None are proposed as part of this application.

4. **Hazardous Waste:**
   The application does not address the presence of hazardous waste. Staff recommends that the applicant develop a policy regarding the fueling and/or maintenance of vessels at the dockage to avoid spills and runoff that may result from customers topping off fuel and oil on their vessels.

   The applicant shall ensure that any boat maintenance activities comply with land development regulations regarding the treatment and disposal of hazardous waste.

5. **Compliance with Applicable Laws and Ordinances:**
   The applicant shall comply with applicable laws and ordinances.

6. **Additional Criteria Applicable to Specific Land Uses. Applicants Shall Demonstrate the Proposed Conditional Use Satisfies the Following Criteria:**

   a. **Land Uses Within a Conservation Area:**

      The applicant has obtained the necessary state and federal permits for the dock, including the accommodation of charter vessels and vessels 40 in length. Any future accessory uses, or any change in use on the site, must be evaluated based on the specific characteristics of the uses, so staff cannot confirm whether those uses satisfy the criteria for land uses within a conservation area.

      Section 110-186 provides that there shall be no new marinas in or immediately to outstanding Florida waters. The basin includes outstanding Florida waters. Therefore, the request for accessory uses to a marina does not comply with Section 110-186.

Section 110-183: *Living marine resources*, states that development within tidal waters shall avoid adverse impacts on benthic communities, including seagrass beds and live bottom communities which are sensitive to increased turbidity and runoff. Staff anticipates that increased intensity associated use of charter vessels would increase turbidity in the basin and my result in adverse impacts on living marine resources, and particularly seagrass beds, which are critical for carbon storage, erosion control, biodiversity, and flood protection.

Additionally, many larger vessels have two or more engines, including more powerful engines. Permitting vessels up to 40' in length may result in increased turbidity, noise, and other adverse impacts on benthic communities within the tidal basin.

The property owners association for Gulf View Pointe, which is adjacent to the subject property and adjoins the shoreline, have expressed concerns that larger vessels with larger engines may result in increased wave action which could impact shoreline stability and erosion on their properties.

Section 110-186 provides that all new or expanded marinas shall provide a demonstration of compliance with state water quality standards by maintaining a water quality monitoring program approved by the state department of environmental protection.

b. **Residential Development:**

Residential development is not proposed as part of this application.

c. **Commercial or Mixed-Use Development:**

The applicant is requesting an expansion of commercial uses on a site within the Conservation zoning district, which conflicts with the provisions of the Conservation zoning district regulations. Any future expanded accessory or commercial uses must be reviewed in accordance with the requirements set forth in the LDRs.

d. **Development Within or Adjacent to Historic Districts:** Not applicable.

e. **Public Facilities or Institutional Development:** Not applicable.

f. **Commercial Structures, Uses and Related Activities Within Tidal Waters: The criteria for commercial structures, uses and related activities within tidal waters are as provided in Section 122-1186.**

Section 122-1186 provides that the regular mooring of watercraft as a commercial enterprise, including charter vessels, are not permitted unless within a duly permitted marina. Therefore, the request for a modification to Condition 20 may not be permitted.

g. **Adult Entertainment Establishments:** Not applicable.

CONCLUSION

The applicant has requested to modify the conditions of approval of City Commission Resolution 14-316 as indicated in the table below.

Existing Conditions	Requested Modification	Planning Analysis
Condition 14 Changes to nonconforming uses are not permitted, and no new commercial use may be developed on-site.	Allow for changes to nonconforming use, and allow for accessory uses to the marina.	The approved dockage is a conditional use; accessory uses to conditional uses shall also be conditional uses. Conditional uses approval shall be based upon a finding that the specific characteristics of use comply with review criteria. The proposed language in Condition 14 would circumvent conditional use review. Therefore, staff cannot recommend approval of the request to include the accessory use language in Condition 14; it is too broad.
Condition 20 Charter vessels are prohibited.	Permit up to six charter vessels with a maximum capacity of six passengers per vessel.	Commercial marinas are neither a permitted nor a conditional use in the Conservation zoning district. Section 122-1186 provides that commercial charter boats may only be regularly moored in duly permitted marina. Therefore, staff cannot recommend approval of the requested modification to Condition 20 because it is **prohibited** by the LDRs.
Condition 24 Vessels are restricted to 30' in length.	Permit vessels up to 40' in length.	Increased vessel size will increase the potential for adverse impacts to marine life and shoreline stabilization through increased boat wake/wave energy. No coastal impact analysis has been provided. The applicant has not met the burden of demonstrating that the proposed modification would not result in adverse impacts to environmental resources at this time. Therefore, staff cannot recommend approval of the proposed modification to Condition 20.

Staff also strongly recommend that the property owner negotiate an easement for pedestrian access from the off-site parking area that would allow guests to avoid entering the sidewalk on North Roosevelt Boulevard.

RECOMMENDATION:

The Planning Department, based on the criteria established by the Comprehensive Plan and the Land Development Regulations, recommends to the Planning Board that the request to modify the conditions of approval of City Commission Resolution 14-316 be **partially approved**, in the form and subject to the conditions listed below:

General Conditions

1. This resolution modifies Conditions 14 and 23 of City Commission Resolution 14-316. All of the other conditions of Resolution 14-316 shall remain in effect. Condition 14 shall be revised as follows:

   *Coding: Added language underlined, deleted language is ~~struck~~ through.

   Condition 14: There shall be no other commercial use of the marina area or parking lot, nor shall the development plan or conditional use authorize the change of the existing legally non-conforming uses to any other commercial use, unless an application for a change of nonconforming use is submitted and approved in accordance with the Land Development Regulations.

2. The property owner may continue the legally nonconforming office use of the existing upland structure. The property owner shall seek conditional use approval to operate any additional or expanded accessory uses to the dockage, in accordance with the procedures outlined in the Land Development Regulations.

Conditions prior to issuance of a Conditional Use Permit, pursuant to City Code Chapter 18, Article XII, Division 1:

3. The property owner shall provide a demonstration of compliance with state water quality standards by maintaining a water quality monitoring program approved by the Florida Department of Environmental Protection in accordance with Section 110-186.
4. The property owner shall provide evidence of compliance with the "dark skies" lighting program required as a condition of Resolution 14-316.
5. The business tax receipt associated with the subject conditional use approval shall be modified to reflect the conditions and restrictions of Resolution 14-316 and any future resolutions that modify the conditions of Resolution 14-316.

Conditions prior to issuance of a final Certificate of Occupancy:

6. The property owner shall obtain and maintain a Conditional Use Permit, pursuant to City Code Chapter 18, Article XII, Division 1. The City Code Compliance shall inspect the property on an annual basis upon reasonable notice to determine compliance with the conditions of the Planning Board resolution. The Conditional Use Permit shall reflect the conditions of City Commission Resolution 14-316 and any future resolutions that modify the conditions of Resolution 14-316.

Public Notice

The Key West Planning Board will hold a public meeting at 5:00 PM, November 16, 2023, City Commission Chambers, 1300 White Street, Key West, Florida. Packets including application materials can a l s o be viewed online the Friday before the meeting at the aforementioned website. Please call or email your questions regarding the online process here: planning-dept@cityofkeywest-fl.gov Phone: (305) 809-3764. The purpose of the meeting will be to consider a request for:

<u>Major Modification to a Major Development Plan</u> – 2407 N. Roosevelt Boulevard (RE# 00002280-000100) –A request for a Major Modification to a Major Development Plan and Conditional Use Approval to modify conditions of approval to allow for the inclusion of charter vessels, vessels up to forty feet in length, and changes in upland land uses at a marina on property located at 2407 North Roosevelt Boulevard in the Conservation zoning district, pursuant to Section 108-91(C) of the Code of Ordinances of the City of Key West.

The City of Key West, Florida
Planning Department
P.O. Box 1409
Key West, FL 33041-1409

PUBLIC MEETING NOTICE

The City of Key West, Florida
Planning Department
P.O. Box 1409
Key West, FL 33041-1409

PUBLIC MEETING NOTICE

The City of Key West, Florida
Planning Department
P.O. Box 1409
Key West, FL 33041-1409

PUBLIC MEETING NOTICE

The City of Key West, Florida
Planning Department
P.O. Box 1409
Key West, FL 33041-1409

PUBLIC MEETING NOTICE

YOU ARE A PROPERTY OWNER WITHIN 300 FEET OF THE SUBJECT PROPERTY

The City of Key West Planning Board will hold a Public Hearing to consider the following request:

Major Modification to a Major Development Plan – 2407 N. Roosevelt Boulevard (RE# 00002280-000100) –A request for a Major Modification to a Major Development Plan and Conditional Use Approval to modify conditions of approval to allow for the inclusion of charter vessels, vessels up to forty feet in length, and changes in upland land uses at a marina on property located at 2407 North Roosevelt Boulevard in the Conservation zoning district, pursuant to Section 108-91(C) of the Code of Ordinances of the City of Key West.

Date of Hearing: December 12, 2023 Time of Hearing: 5:00 PM

Location of Hearing: City Commission Chambers, 1300 White Street, Key West, FL 33040

Instructions on how to comment, watch or listen to the hearing are available online at www.cityofkeywest-fl.gov. Click on Agendas & Minutes. Packets including application materials can also be viewed online the Friday before the meeting at the aforementioned website. Please call or email your questions regarding the online process here: planning-dept@cityofkeywest-fl.gov, Phone: (305) 809-3764

Pursuant to Section 286.0105, Florida Statutes, if a person decides to appeal any decision made by the Planning Commission or the City Commission with respect to any matter considered at such hearing or meeting, one will need a record of the proceedings and for such purpose that person may need to ensure that a verbatim record of the proceedings is made; such record includes a testimony and evidence upon which the appeal is based.

ADA Assistance: It is the policy of the City of Key West to comply with all requirements of the Americans with Disabilities Act (ADA). Please call the TTY number at (305) 809-1000 or the ADA Coordinator at (305) 809-3811 at least five (5) business days in advance for sign language interpreters, assistive listening devices, or materials in accessible format.

YOU ARE A PROPERTY OWNER WITHIN 300 FEET OF THE SUBJECT PROPERTY

The City of Key West Planning Board will hold a Public Hearing to consider the following request:

Major Modification to a Major Development Plan – 2407 N. Roosevelt Boulevard (RE# 00002280-000100) –A request for a Major Modification to a Major Development Plan and Conditional Use Approval to modify conditions of approval to allow for the inclusion of charter vessels, vessels up to forty feet in length, and changes in upland land uses at a marina on property located at 2407 North Roosevelt Boulevard in the Conservation zoning district, pursuant to Section 108-91(C) of the Code of Ordinances of the City of Key West.

Date of Hearing: December 12, 2023 Time of Hearing: 5:00 PM

Location of Hearing: City Commission Chambers, 1300 White Street, Key West, FL 33040

Instructions on how to comment, watch or listen to the hearing are available online at www.cityofkeywest-fl.gov. Click on Agendas & Minutes. Packets including application materials can also be viewed online the Friday before the meeting at the aforementioned website. Please call or email your questions regarding the online process here: planning-dept@cityofkeywest-fl.gov, Phone: (305) 809-3764

Pursuant to Section 286.0105, Florida Statutes, if a person decides to appeal any decision made by the Planning Commission or the City Commission with respect to any matter considered at such hearing or meeting, one will need a record of the proceedings and for such purpose that person may need to ensure that a verbatim record of the proceedings is made; such record includes a testimony and evidence upon which the appeal is based.

ADA Assistance: It is the policy of the City of Key West to comply with all requirements of the Americans with Disabilities Act (ADA). Please call the TTY number at (305) 809-1000 or the ADA Coordinator at (305) 809-3811 at least five (5) business days in advance for sign language interpreters, assistive listening devices, or materials in accessible format.

YOU ARE A PROPERTY OWNER WITHIN 300 FEET OF THE SUBJECT PROPERTY

The City of Key West Planning Board will hold a Public Hearing to consider the following request:

Major Modification to a Major Development Plan – 2407 N. Roosevelt Boulevard (RE# 00002280-000100) –A request for a Major Modification to a Major Development Plan and Conditional Use Approval to modify conditions of approval to allow for the inclusion of charter vessels, vessels up to forty feet in length, and changes in upland land uses at a marina on property located at 2407 North Roosevelt Boulevard in the Conservation zoning district, pursuant to Section 108-91(C) of the Code of Ordinances of the City of Key West.

Date of Hearing: December 12, 2023 Time of Hearing: 5:00 PM

Location of Hearing: City Commission Chambers, 1300 White Street, Key West, FL 33040

Instructions on how to comment, watch or listen to the hearing are available online at www.cityofkeywest-fl.gov. Click on Agendas & Minutes. Packets including application materials can also be viewed online the Friday before the meeting at the aforementioned website. Please call or email your questions regarding the online process here: planning-dept@cityofkeywest-fl.gov, Phone: (305) 809-3764

Pursuant to Section 286.0105, Florida Statutes, if a person decides to appeal any decision made by the Planning Commission or the City Commission with respect to any matter considered at such hearing or meeting, one will need a record of the proceedings and for such purpose that person may need to ensure that a verbatim record of the proceedings is made; such record includes a testimony and evidence upon which the appeal is based.

ADA Assistance: It is the policy of the City of Key West to comply with all requirements of the Americans with Disabilities Act (ADA). Please call the TTY number at (305) 809-1000 or the ADA Coordinator at (305) 809-3811 at least five (5) business days in advance for sign language interpreters, assistive listening devices, or materials in accessible format.

YOU ARE A PROPERTY OWNER WITHIN 300 FEET OF THE SUBJECT PROPERTY

The City of Key West Planning Board will hold a Public Hearing to consider the following request:

Major Modification to a Major Development Plan – 2407 N. Roosevelt Boulevard (RE# 00002280-000100) –A request for a Major Modification to a Major Development Plan and Conditional Use Approval to modify conditions of approval to allow for the inclusion of charter vessels, vessels up to forty feet in length, and changes in upland land uses at a marina on property located at 2407 North Roosevelt Boulevard in the Conservation zoning district, pursuant to Section 108-91(C) of the Code of Ordinances of the City of Key West.

Date of Hearing: December 12, 2023 Time of Hearing: 5:00 PM

Location of Hearing: City Commission Chambers, 1300 White Street, Key West, FL 33040

Instructions on how to comment, watch or listen to the hearing are available online at www.cityofkeywest-fl.gov. Click on Agendas & Minutes. Packets including application materials can also be viewed online the Friday before the meeting at the aforementioned website. Please call or email your questions regarding the online process here: planning-dept@cityofkeywest-fl.gov, Phone: (305) 809-3764

Pursuant to Section 286.0105, Florida Statutes, if a person decides to appeal any decision made by the Planning Commission or the City Commission with respect to any matter considered at such hearing or meeting, one will need a record of the proceedings and for such purpose that person may need to ensure that a verbatim record of the proceedings is made; such record includes a testimony and evidence upon which the appeal is based.

ADA Assistance: It is the policy of the City of Key West to comply with all requirements of the Americans with Disabilities Act (ADA). Please call the TTY number at (305) 809-1000 or the ADA Coordinator at (305) 809-3811 at least five (5) business days in advance for sign language interpreters, assistive listening devices, or materials in accessible format.

BANANA LLC
1000 MARKET ST 300
PORTSMOUTH, NH 03801

KEY WEST LIONS CLUB
2405 N ROOSEVELT BLVD
KEY WEST, FL 33040

2407 N ROOSEVELT LLC
3953 MAPLE AVE STE 350
DALLAS, TX 75219

CITY OF KEY WEST FL FOR: BEHIND OLD FLIPPER SEA SC
PO BOX 1409
KEY WEST, FL 33041

HOUSING AUTHORITY OF THE CITY OF KEY WEST FLORIDA
1400 KENNEDY DR
KEY WEST, FL 33040

GULFVIEW POINTE HOMEOWNERS' ASSOCIATION, INC
2601 GULFVIEW DR
KEY WEST, FL 33040

ZUIDERVEEN KATHLEEN M TRUST
6944 OAKBROOK ST SE
GRAND RAPIDS, MI 49546

LEEN KEVIN & MARY
PO BOX 1032
KEY WEST, FL 33041

OHARA TERRY M AND DONNA F REV JOINT TR
2607 GULFVIEW DR
KEY WEST, FL 33040

RATCLIFFE CAROL A
2609 GULFVIEW DR
KEY WEST, FL 33040

LAPPKE ANN E & CARL E
918 SOUTH ST
POINT PLEASANT BEACH, NJ 08742

GULFVIEW 2613 LLC
117 SAND HILLS RD
MONMOUTH JUNCTION, NJ 08852

HULTGREN BRUCE W REVOCABLE TRUST
7367 LILAC LN
VICTORIA, MN 55386

MAZUREK ANDREW S 1999 DECLARATION TRUST
41 CAMBRIDGE DR
OAK BROOK, IL 60523

MCGRAIL TAMI L
1200 4TH ST PMB 221
KEY WEST, FL 33040

ZYGOCKI FAMILY TRUST C/O DAVID ZYGOCKI TRUSTEE
476 DE HARO LN
FRIDAY HARBOR, WA 98250

MALPASS WILLIAM AND JANIS JOINT REV TRUST
2623 GULFVIEW DR
KEY WEST, FL 33040

ALLISON III JOHN R
PO BOX 2129
KEY WEST, FL 33045

HOLSONBACK JOHN & STACIA
2414 OAK LANDING DR
BRANDON, FL 33511

CHOATE CINDY A & STEVE
2629 GULFVIEW DR
KEY WEST, FL 33040

MENENDEZ TERESA
2631 GULFVIEW DR
KEY WEST, FL 33040

RYSMAN PETER HERMAN
2631 GULFVIEW DR
KEY WEST, FL 33040

MONCH PROPERTIES LLC
1146 CANTON ST
ROSWELL, GA 30075

CENTENNIAL BANK
11290 OVERSEAS HWY
MARATHON, FL 33050

DIAMOND 2020 LLC
29361 FORRESTAL AVE
BIG PINE KEY, FL 33043

RLJ II-F KEY WEST LLC
3 BETHESDA METRO STE 1000
BETHESDA, MD 20814

FLORIDA RETAIL STORES LLC
1300 GEZON PKWY SW
WYOMING, MI 49509

2500 N ROOSEVELT LLC
513 FLEMING ST STE 1
KEY WEST, FL 33040

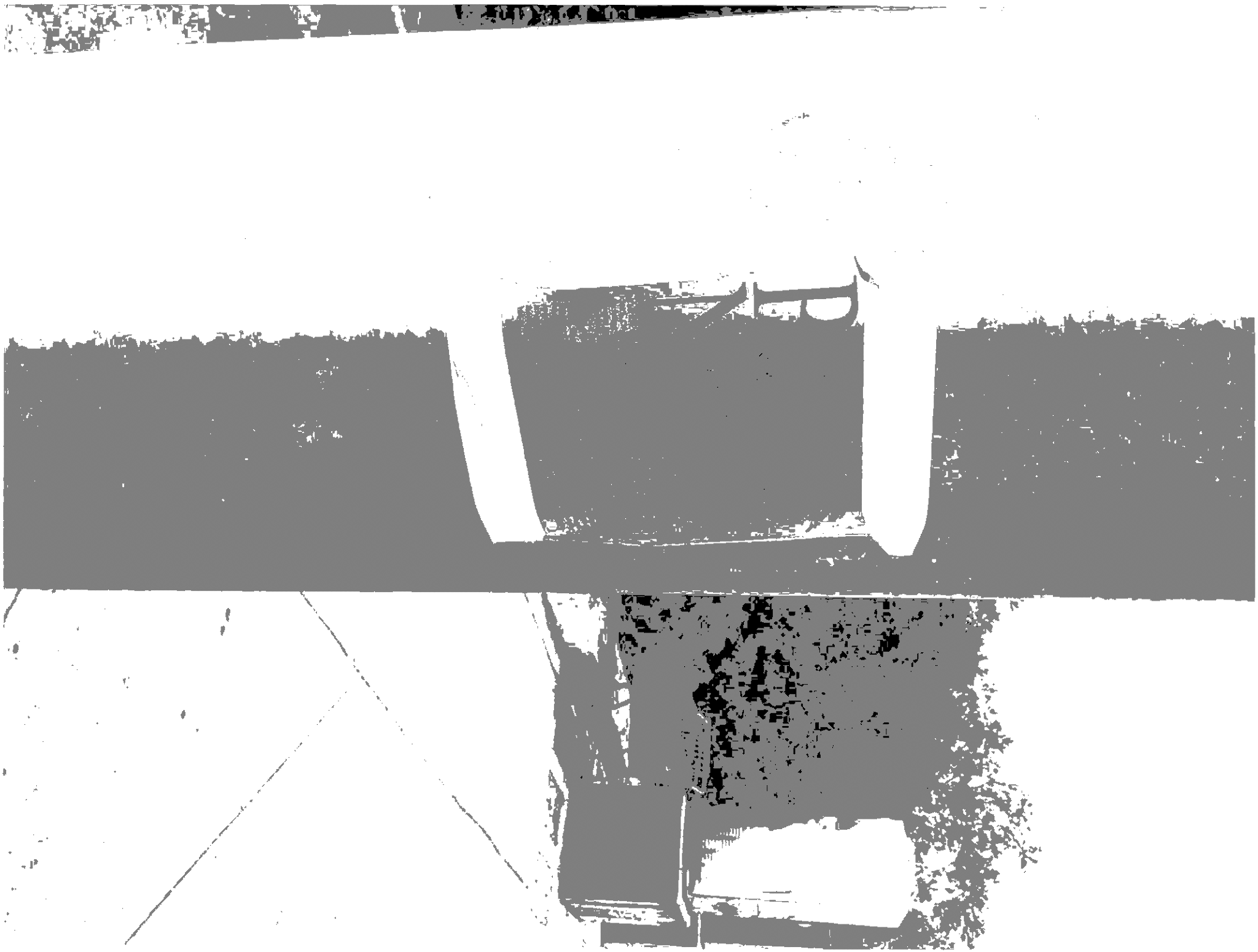
GROSSMAN FAMILY LIMITED LIABILITY LP
1016 FLAGLER AVE
KEY WEST, FL 33040

MILE 2 KEY WEST LLC
PO BOX 1944
KEY WEST, FL 33041

STATE OF FLA DEPT OF TRANSPORTATION
1000 NW 111TH AVE
MIAMI, FL 33172

HAPPY LANDINGS
MARINA

HAPPY LANDINGS
MARINA



November 15, 2023

Key West Planning Board
1300 White Street Key West, Florida 33040

Dear Planning Board Members,

The following Comments/Objections by the Gulfview Pointe Homeowners Association are in response to the Planning Board Staff Report prepared for the Planning Board meeting of 11/16/23 and follow the outline provided in said Report. In addition, we believe the area should be designated as a No-Wake zone as outlined by the Florida Keys National Marine Sanctuary regulations. They state, "Speed Limits: Except in officially marked channels, operating a vessel at more than 4 knots/no wake within 100 yards of residential shorelines, stationary vessels, or navigational aids marking reefs is prohibited." All of the 25 properties in the Association are located directly on the shoreline.

1. *Condition 14* - Agree with staff recommendation. Commercial rental of storage space to customers exceeds the scope of the existing nonconforming office uses. Thus, applicant's request should be denied.

2. *Condition 20* - Agree with staff recommendation. The subject facility is not a commercial marina and is prohibited in the subject Conservation Zoning District. Therefore, charter vessels are prohibited. Approval of charter boats will unreasonably increase demands on parking and traffic congestion. Applicant's request should be denied.

3. *Condition 23* - Disagree with staff recommendation to increase vessel maximum length from 30' to 35'. Water turbulation increases in direct relation to vessel length, particularly, with twin engine vessels common among boats in excess of 30". (See point #6, below, for related concerns.) It was with great forethought and vision our civic leaders created the Conservation District, and it should be modified only with great consideration and with overwhelming benefit to the common good, keeping the interests of nearby residents and wildlife foremost in mind.

   Concerning residents' interests, shoreline erosion is a constant threat from notorious storms we often encounter. Boat traffic only exacerbates this erosion from wave action, causing great expense to minimize effects and in restoration, and leads to reduced property utilization and value. In regard to wildlife, our treasured manatees have become increasingly endangered from encounters with boaters and their propellors. Minimizing boat traffic, size and type should be a priority for their safety, as well. Applicant's request for the maximum vessel length should be denied.

4. *Utilities Comments* - Agree with Staff recommendation. A suitable site plan should be presented addressing solid waste storage and disposal.

5. *Parking Analysis* - The hotel across the street and its permitted occupancy was approved, in large part, on its parking plan. Sharing a portion of the existing off-site parking lot with the applicant seems inconsistent with prior decisions allowing for the hotel's operation. Accordingly, the applicant's request to utilize 20 parking spaces intended for the hotel should be denied. Short of creating entirely new parking elsewhere, the proposed marina plan should be reduced in scope to conform, otherwise, to available parking for its operations. Further, parking lot spaces should exclude boat trailers so as to not reduce spaces for standard vehicle parking.

6. *Code Criteria, Section 108-233 (3) Water quality* - As staff points out, charter vessels likely will increase activity within the marina basin. Undoubtedly, the increased frequency of charter vessel usage as compared to customary personal recreational usage leads to increased turbidity, which would have an adverse impact on water quality and environmentally sensitive lands. (See point # 9, below.)

   As staff opine in point # 8, below, charter vessels would likely result in increased intensity, trip generation, and [negative] impacts on water quality because they generally operate on a daily basis, often with multiple trips per day. In contrast, staff state recreational vessels are generally used less frequently and result in lower intensity impacts. This negative affect on turbidity and water quality also increases in proportion to vessel length. As previously stated, applicant's request for longer boats and charter vessels should be denied.

7. *Section 108-234: Appearance, design and compatibility* - Absent from the application seems to be an environmental impact study. For reasons stated above, such a study should be absolutely required and carefully considered. Without this, one cannot reliably anticipate the effects of proposed modifications on environmental, costal, soil and water resources. As staff states in the 11/16/23 Report, the applicant is currently advertising slip leases for vessels up to 45' in length. This demonstrates arrogance, misplaced presumption and poor character, casting a cloud on whether the applicant should be provided any special consideration for the proposal at all!

8. *Section 108-235: Site location and character of use* - See point # 6, above.

9. *Section 108-242: Environmentally sensitive areas* - The project is located in an environmentally sensitive area, and includes wetlands and open water. As described in staff comments pertinent to Section 108-247 (a), the marina basin includes seagrass beds and marine life which are sensitive to increased turbidity, and other forms of pollution and water runoff. As stated in the staff Report, item 6 (a), Section 110-183, seagrass beds and live bottom communities [are] sensitive to increased turbidity and runoff. Seagrass beds are critical for carbon storage, erosion control, biodiversity, and flood protection.

The site is in the Conservation Zoning District where marinas and regular mooring of charter vessels are prohibited. In mirroring conformance to the Zoning District, approval of a marina operation should be limited and restrictive with no charter vessels permitted. (Reference point #6, above.) Once, again, staff reports the applicant has not provided an analysis of the environmental impact of the proposed [major] modifications, a significant omission!

10. *Section 108-246: Economic resources* - Staff report the proposed project does not anticipate a yield to ad valorem taxes. Thus, it is expected there will be no direct economic benefit to our Key West community, removing a potential incentive for approval.

11. *108-247 (a): Special Considerations* - See point # 9, above.

12. *Exterior lighting (Section 108-284):* Agree with staff recommendation to conform with a "dark sky" program. This is especially important given the adjacent residential district. Residents in the immediate area should not have to accept a loss in the viewing of our celestial bodies during the dark hours of the day. Efforts to appropriately minimize lighting in the project area would be much appreciated.

13. *122-62(C) (2): Criteria for Conditional Use Review and Approval* - We disagree with the applicant's assertion that the marine industry has made technological advancements since the time of the development plan approval allowing for larger boats to decrease their three-foot potential draft, suggesting the basin can accommodate larger boats. We challenge the applicant to provide evidence of this that would warrant an increase in maximum boat length for the marina project. A thirty-foot maximum length was found satisfactory ten years ago, and it is a perfectly adequate maximum now.

    We further recommend and urge the Planning Board to specify that, whatever maximum vessel length is ultimately approved, it be defined as "length overall (LOA)," which we believe has been the intent of the Board all along. Often boaters will attempt to minimize their boat length, for various reasons, to exclude either or both the pulpit or the swim platform. Also, add-ons to boat lengths, such as dingy mounting devices, should be included in the LOA.

14. *1 22-62 (C) (4): Hazardous Waste* - Agree with staff that the applicant develop a policy addressing the fueling and/or maintenance of vessels at the dockage to mitigate water pollution and potentially dangerous situations.

15. *122-62 (C) (6) (c)* - The applicant is requesting an expansion of commercial uses, which conflicts with the Conservation District. We should be principled custodians of our beautiful land and waterways, and seek to honor the Conservation District to protect our natural resources, and to minimize negative impacts to our close-by neighbors.

Other Considerations

1. Boat wakes cause shoreline erosion. Kindly require No Wake zones throughout the channel connecting the basin to the open water, extending far enough to protect residential personal property from its detrimental effects.

2. The applicant should be required to file an appropriate bond with the City to ensure financial resources are sufficient to see the project through to completion.

3. The applicant should be required to address parking arrangements planned for boat trailers, should trailers be needed, depending on vessel length.

Respectfully,

Kathleen M. Zuiderveen, Secretary
Gulfview Pointe Board of Directors
On behalf of the residents of Gulfview Drive

Barton W. Smith, Esq.
Telephone: (305) 296-7227
Facsimile: (305) 296-8448
E-mail: Bart@SmithHawks.com
Brandi@SmithHawks.com

November 15, 2023

SENT VIA ELECTRONIC MAIL

Key West Planning Board

Katie Halloran, Planning Director
Email: Katie.Halloran@cityofkeywest-fl.gov

Keri O'Brien, City Clerk
Email: KOBrien@cityofkeywest-fl.gov

RE: Objection to Modification of Conditions to Major Development Plan and Conditional Use for the Property Located at 2407 N. Roosevelt Blvd.

Please allow this correspondence to serve as a public comment and objection to the Application for a Major Modification ("Modification") of the development plan and conditional use for 2407 North Roosevelt Boulevard (the "Property") sent on September 15, 2023. This firm represents the interests of the neighboring property owner, Banana LLC ("Banana Bay"). The neighboring property is located at 2319 North Roosevelt Boulevard. Banana Bay just recently learned of the upcoming November 16, 2023 Planning Board Meeting. We were not advised of this requested Major Development Plan by our neighbor, the applicant.

Banana Bay spent a lot of time and effort working with prior owners to reach an agreement on what is currently approved for this property. Banana Bay requests that the Planning Board deny the Modification. There is no compliance with the procedural requirements to modify either the prior conditional use or the prior development plan. The requested Modification would further be improper as it would completely vitiate the underlying conditions upon which the prior development plan was granted and neighbors relied upon.

PROCEDURAL HISTORY

On November 17, 2014, the City Commission approved Resolution 14-316, granting the "Major Development Plan and Conditional Use" to the prior owner of the Property. Resolution 14-316 was both a conditional use and a major development plan which included various conditions. At issue with the Modification are the following three, existing conditions:

> Condition 14 (Required for a Certificate of Occupancy): There shall be no other commercial use of the marina area or parking lot, nor shall the development plan or conditional use authorize the change of the existing legally non-conforming uses to any other commercial use.
>
> Condition 20 (Subject to Conditional Approval Permit and subject to annual inspection): There shall be no use of the marina for charter boats of any kind, including active or passive docking of charter vessels.
>
> Condition 23 (Subject to Conditional Approval Permit and subject to annual inspection): No vessel longer than thirty (30) feet, nor any vessel with a draft of more than three (3) feet shall be docked, or allowed to use the marina.

Notably, these conditions were integral to the passage of the Major Development Plan and Conditional Use, which we relied upon. As stated repeatedly in the Planning Board Staff Report to support intensity and traffic use, "no commercial activities will take place as chartered boats are to be prohibited." Staff Report at 6. "The dockage will not support any charter boat activity of any kind." *Id.* at 8.

There was a similar reliance on the prohibition of commercial activity. The Staff Report acknowledges that the use of the Property as a Marina would have some increased impact, *see, e.g.,* Staff Report at 4-5. But this was to be mitigated because the remaining area would remain non-commercial; the Staff Report accepted the applicant's statement that all commercial activities for the marina would take place within a single building, with no need for storage or display, and that there would be no commercial activities taking place. This was further echoed in the public comments to the development plan; for example, John and Kathleen Zuiderveen wrote the following to the City Commission to express their concerns "We understand this ("the staff report referring to the ban on commercial activities") to provide that no retail activity but might this language allow retail activity to evolve later."

Also, the length of the vessels utilizing the proposed Marina was a clear condition; the conditions of length and draft were independent of each other, and considered in light of the sensitivity of the area and the unavoidable shading that would occur to the seagrass habitat.

SPECIFIC REQUESTS FOR MODIFICATION AND MEANING

The specific modification requests made by the applicant are changes to the conditional use and development plan, specifically Nos. 14, 20, and 23, as follows (~~strikethrough~~ indicates deleted text, **bold** indicates proposed changes applicant requests):

14: There shall be no other commercial use of the marina area or parking lot, nor shall the development plan or conditional use authorize the change of the existing legally non-conforming uses to any other commercial use, **unless an application for a change of nonconforming use is submitted. Accessory uses to the marina shall be permitted.**

20: ~~There shall be no use of the marina for charter boats of any kind, including active or passive docking of charter vessels.~~ **The marina shall have no more than six (6) charter vessels at a maximum of six (6) passengers for active or passive docking.**

23: No vessel longer than ~~thirty (30)~~ **forty (40)** feet, nor any vessel with a draft of more than three (3) feet shall be docked, or allowed to use the marina.

Briefly put, the three requests for modification to the Major Development Plan and Conditional Use can be stated as follows- the change to condition 14 completely negates condition 14 prohibiting all commercial uses outside storage of recreational vehicles in wet slips. What was intended as an absolute prohibition and as a requirement for the Development Plan and Conditional Use is changed to become the same requirement that any other property must follow. This seemingly minor change is attempting to legalize all the activity that was previously prohibited. Moreover, accessory uses to marinas as of right would allow unlimited commercial use of the property; commercial offices, enterprises, and fishing operations are perfectly acceptable as "accessories," as well as other waterfront structures. Sec. 122-1186.

The second change does the same thing; whereas the prior plan passed because the marina was expressly non-commercial and would not allow charters, this proposed major modification amends it to allow charters. Finally, the applicant wants to increase the boat size, despite the limitation on the boat size being a clear requirement of the passage of the Development Plan and Conditional Use.

In summary, a Development Plan and Conditional Use that passed in large part because of the stringent requirements regarding commercial use of the property, commercial use of the marina, and ensuring smaller boats were utilized (and the concomitant smaller impacts on the environment, resources, and traffic) this proposed major modification is now looking to void those prior conditions and commitments that allowed the Development Plan and Conditional Use to be approved.

PROCEDURAL GROUNDS FOR OBJECTION

The original application was for a Major Development Plan and Conditional Use. Resolution 14-316 granted the Major Development Plan and Conditional Use. This proposed major modification requests a change to the Major Development Plan and Conditional Use. *See* Cover Letter by Applicant, dated September 15, 2023, "we are seeking to modify specific conditions of a Major Development Plan and Conditional Use approved by Res. 14-316[.]" As such, the applicant is required to go through the process under the code for modifying a development plan, and modifying a conditional use.

This proposed major modification of a development plan is governed by the City of Key West Code (hereafter, "Code"), specifically the Land Development Regulations. Code Sec. 108-91 states in pertinent part that modifications of the type requested here (those not specifically enumerated as administrative or minor modifications) "will be treated in the same manner as the original approval." Further, "[c]hanges to specific conditions required by the original approval shall require approval by the administrative body that originally approved the development and shall be noticed in accordance with division 2 article VIII of chapter 90." As such, the major modifications requested, and the changes to the specific conditions, must comply with the requirements of the original approval and division 2, article VIII, chapter 90. Those are as follows:

1. Review by staff. (Sec. 109-94).
2. Review and action by planning board. (Sec. 108-96).
3. Review and action by city commission (as this is a major development plan). (Sec. 108-98).
4. Notice of the public hearing in a newspaper. (Sec. 90-642).
5. Mailed notice to property owners within 300 feet. (Sec. 90-643).

6. Posted notice on the Property. (Sec. 90-644).

7. The posted notice on the property must be legible from an adjacent public street. (Sec. 90-644).

8. The notice must be at least ten (10) days prior to the hearing. (Sec. 90-646).

The Planning Board meets on November 16, 2023. The notice packet provided by the City purports to indicate that there is compliance with the notice requirements, including that a posted notice was placed on the property. *See* Notice Packet at 7-8. However, the Public Notice (1) did not face the adjacent public street (N. Roosevelt Blvd.), (2) was not legible from the public street, and (3) most concerningly, was not posted when agents from the property owner went to ascertain if this had been publicly posted. Here are true and correct copies of the photographs taken from N. Roosevelt Blvd. taken by an agent of Banana Bay on November 9 and November 10, 2023, both looking at the spot where the Notice was supposed to be posted, and looking toward the Property from N. Roosevelt Blvd.

This is the entirety of the property as seen from the adjacent public road, with no posted notice in sight-

Following are additional pictures of the pole that supposedly has the posted notice-

Following are additional pictures of the property in an attempt to find the notice-

NOW LEASING
HAPPY LANDINGS

Simply put, despite a picture of a posted notice in the Notice Packet (that would not have been visible to the adjacent public street), there is no evidence that prior to the meeting, the Public Notice was posted despite the best efforts of Banana Bay to verify same. As of today's date, Banana Bay has been unable to verify a posted notice on Property. For those procedural reason alone, the Modification must be denied.

SUBSTANTIVE GROUNDS FOR OBJECTION

Simply put, the Modification would destroy the conditions that were required for granting the Development Plan and Conditional Use in the first place, and is a backdoor to avoiding rigorous scrutiny. The original staff report, issued on August 14, 2014, which approved the Major Development Plan and Conditional Use, was able to rely on these conditions for a number of key issues related to traffic, character of use, and environmental impact regarding the number of slips and size and character of the boats utilizing the slips.

Allowing this proposed major modification of the underlying Development Plan, would permit, in effect, a complete *de novo* review of the Development Plan *qua* Development Plan without these conditions as required by the Code, sec. 108-91, would allow the applicant to "backdoor" these changes that were an absolute requirement to the original Development Plan and Conditional Use. Put more plainly, the City of Key West must look skeptically at any applicant

that guarantees certain conditions as part of a Development Plan, and then after building out with the permission of the City, turns around and asks the City of Key West to remove those conditions that were required to get the approval.

In conclusion, at a minimum the applicant must fully comply with the procedural requirements of notice so that all neighboring property owners are aware of these proposed changes and can respond and follow the proper procedure for such modifications. However, even with the limited amount of time and lack of notice provided, Banana Bay objects to the requested major modifications.

Sincerely,

Barton W. Smith

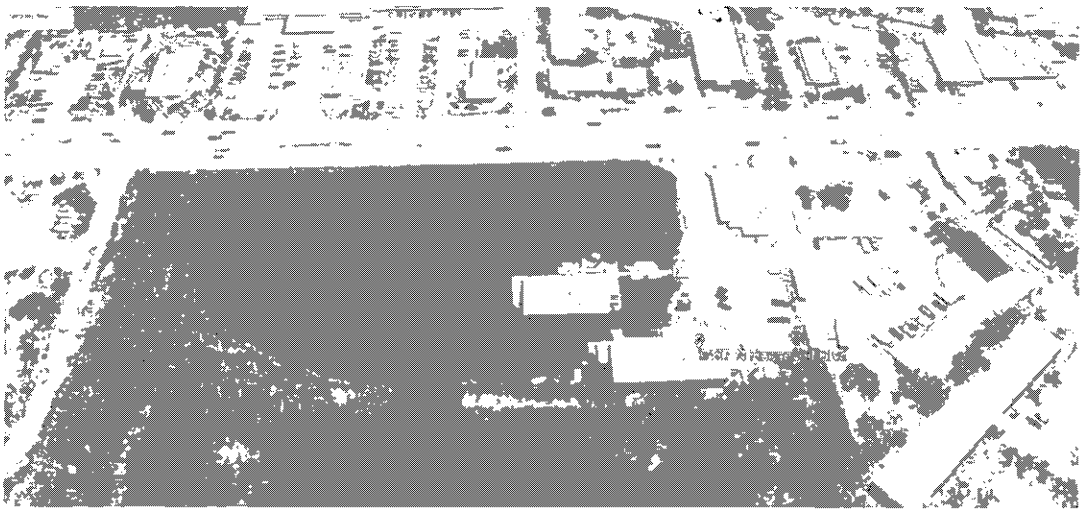
BWS/bg

Cc: Client

THE CITY OF KEY WEST
PLANNING BOARD
Staff Report

To:	Chairman and Planning Board Members
Through:	Katie P. Halloran, Planning Director
From:	Jordan Mannix-Lachner, Planner II
Meeting Date:	November 16, 2023
Application:	**Major Modification to a Major Development Plan and Conditional Use Approval – 2407 N. Roosevelt Boulevard (RE# 00002280-000100)** – A request for a Major Modification to a Major Development Plan and Conditional Use Approval to modify conditions approval to allow for the inclusion of charter vessels, vessels up to forty feet in length, and changes in upland land uses at a marina on property located at 2407 North Roosevelt Boulevard in the Conservation zoning district, pursuant to Section 108-91(C) of the Code of Ordinances of the City of Key West.

Request:	The applicant is requesting to modify the conditions of City Commission Resolution 2014-326, to allow for the inclusion of charter vessels, vessels up to forty feet in length, and changes in upland land uses at a marina on property located at 2407 North Roosevelt Boulevard
Applicant:	Richard McChesney of Spottswood, Spottswood, Spottswood & Sterling, PLLC
Property Owner:	2407 N. Roosevelt, LLC
Location:	2407 N. Roosevelt Boulevard (RE# 00002280-000100)
Zoning:	Conservation zoning district



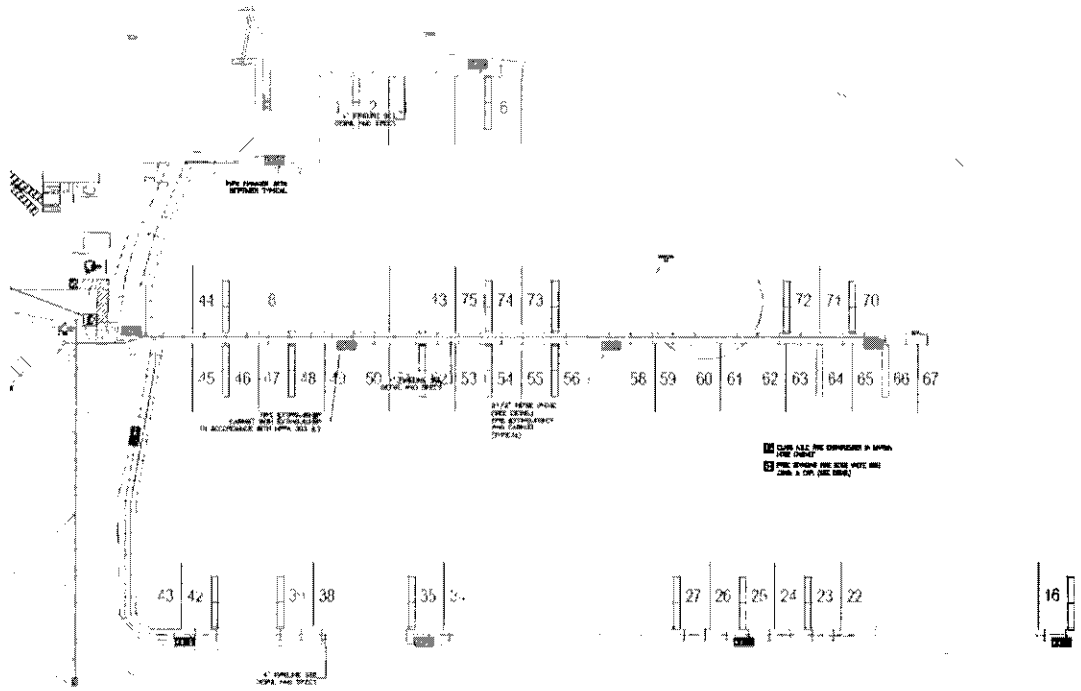
Background:

City Commission Resolution 14-316 approved a Major Development Plan and Conditional Use to allow for the construction of a dockage with 79-berths in a tidal water basin at property located at 2407 N. Roosevelt Blvd (RE# 00002280-000100.)

The property is located in the Conservation zoning district. There are no permitted uses in the Conservation district; all uses are conditional. Section 122-129(1)-(2) provides for the conditional uses for area above and below the mean high-water line. Below mean high water, the only conditional uses/facilities are watercraft, fishing piers, docks, and related boardwalks. Above mean high water, the only conditional uses are boardwalks, hiking trails, picnic areas, observation towers, and low-density residential development. Marinas are neither a permitted nor conditional use in the Conservation district; the conditional use approval authorized a "dockage."

The parcel includes approximately four acres of tidal waters fringed by mangroves, and approximately 27,000 square-feet of upland area. A 10,000 square-foot mixed-use structure sits on the upland, adjacent to the mangrove fringe. When the development plan was approved in 2014, the upland building was occupied by various medical and professional offices and two dwelling units. The basin contained a one-story structure over water on pilings. The structure sat on a separately owned parcel (RE# 00002280-000101) which was not included in the development plan or conditional use approval. The building housed professional offices.

A building permit for the dock was obtained in 2017. Construction of the docks stalled for several years. New owners purchased the property in 2022, as well as the parcel containing the over-water building. Construction of the docks re-commenced with a modified layout, and the over-water building was demolished. The upland building was vacated. A final inspection for the dock permit was completed in September 7, 2023. The building demolition and dock reconfiguration was reflected in a minor modification application that was reported to the Planning Board at the October 19, 2023 meeting. The applicant has also submitted a building permit for the installation of 68 hydraulic boat lifts on dock slips.



Dock Layout.

The applicant obtained a Temporary Certificate of Occupancy for the dock on October 4, 2023. Pursuant to Conditions 3 and 5 of Resolution 14-316, the applicant must obtain a Public Art Plan approval from the Art in Public Places Board and have the art installed and inspected prior to issuance of a Certificate of Occupancy. The applicant should coordinate with the Art in Public Places program to ensure these requirements are met prior to issuance of a final Certificate of Occupancy.

Proposed Modifications

The applicant is requesting to modify conditions 14, 20, and 23 of City Commission Resolution 14-316, as described below:

Existing Conditions per Res. 14-316	Conditions Proposed by Applicant
Condition 14: There shall be no other commercial use of the marina area or parking lot, nor shall the development plan or conditional use authorize the change of the existing legally non-conforming uses to any other commercial use.	**Condition 14:** There shall be no other commercial use of the marina area or parking lot, nor shall the development plan or conditional use authorize the change of the existing legally non-conforming uses to any other commercial use, unless an application for a change of nonconforming use is submitted. Accessory uses to the marina shall be permitted.
Condition 20: There shall be no use of the marina for charter boats of any kind, including active or passive docking of charter vessels.	**Condition 20:** The marina shall have no more than six (6) charter vessels at a maximum of six (6) passengers for active or passive docking.
Condition 23: No vessel longer than thirty (30) feet, nor any vessel with a draft of more than three (3) feet shall be docked, or allowed to use the marina.	**Condition 23:** No vessel longer than thirty-five (35) feet, nor any vessel with a draft of more than three (3) feet shall be docked, or allowed to use the marina.

Analysis of Proposed Modification to Condition 14

The existing Condition 14 restricts the expansion of commercial use associated with the dockage. It also specifies that the development plan and conditional use approval does not authorize the change of existing legally nonconforming use. The effect of Condition 14 is that the commercial uses associated with the dockage are not expanded to the point that the facility operates as a marina, which is a prohibited use in the subject district. Additionally, the Code provides that legally nonconforming uses may be changed to another nonconforming use, with Planning Board approval. By prohibiting the change of legally nonconforming uses to any other commercial use, the resolution restricted the ability to change the nonconforming office uses to nonconforming marina uses.

The applicant's proposed modification to Condition 14 removes these restrictions and allows for accessory "marina" uses throughout the site.

Section 122-1181 states: "Accessory uses or structures shall be permitted by right in a subject district if the principal use is a permitted use; however, the accessory use or structure shall be a conditional use if the principal use is a conditional use."

Given that marinas are not a conditional use in the subject district, the Code cannot permit accessory uses to a marina; the uses must be accessory to a "dockage," and they must be approved through the conditional use process.

Section 122-62 states that "a conditional use shall be permitted upon a finding by the Planning Board that the proposed use ... [complies] with the criteria specified in this section." It further requires that conditional use applications clearly describe specific characteristics of the proposed use, which shall be reviewed to ensure that the proposed use does not result in adverse impacts. There are additional conditional use criteria for land uses within a conservation area.

The subject application does not propose or specify a specific accessory use, therefore it is not possible to review the characteristics of the proposed use and come to a finding as to whether it complies with the review criteria set forth in the Code. Therefore, staff cannot support a modification to Condition 14 that includes the sentence "Accessory uses to the marina shall be permitted."

According to licensing records, the legally nonconforming uses in the upland building that have not been abandoned as of October 2023 include a massage studio and a medical office.

In an email dated October 31, 2023, the applicant stated that the property owner is contemplating an upland dock office, with storage space for lessees of the dockage. In accordance with Section 122-30, the applicant may continue the legally nonconforming office use of the upland structure, so long as the use has not been abandoned. Staff's position is that the office may contain storage space for use by the property owner and guests, but the commercial rental of storage space to customers exceeds the scope of the existing nonconforming office uses.

Analysis of Proposed Modification to Condition 20

Condition 20 prohibits the docking of charter vessels. The applicant proposes a modification to Condition 20 which would allow up to six charter vessels, each with a capacity of up to six passengers.

The existing prohibition on charter vessels reflects the provision in Code Section 122-1186, which stipulates that regularly moored watercraft shall only be authorized for use as commercial enterprise within a duly permitted marina. Section 122-1186 goes on to state: "This subsection shall not preclude the regular mooring of watercraft used for fishing operations, charters and other water-dependent uses, provided such mooring is at a commercial marina."

The subject facility is not a commercial marina, and commercial marinas are prohibited in the subject district. Therefore, charter vessels are prohibited from regularly mooring at the property. As a result, staff cannot support the proposed modification to Condition 20.

Analysis of Proposed Modification to Condition 23

Condition 23 restricts the maximum vessel length to 30 feet. The applicant proposes a maximum vessel length of 35'. Vessels of this length are authorized under the project's Florida Department of Environmental Protection and Army Corps of Engineer permits. Therefore, staff does not object to the proposed modification to Condition 23.

Utilities Comments

The Utilities Department provided the following comments regarding the application:

1. Utilities would like to confirm sanitary sewer facilities will be available for the proposed all vessels leasing a slip, including the charter boats. Please request that the applicant provide a sanitary sewer plan that shows the sanitary sewer pump out connection(s) for the marina.
2. Please request that the applicant provide a site plan that shows the location for solid waste storage, i.e., dumpster(s). Solid waste storage shall be screened from public ways, pursuant to Sec. 108-279.

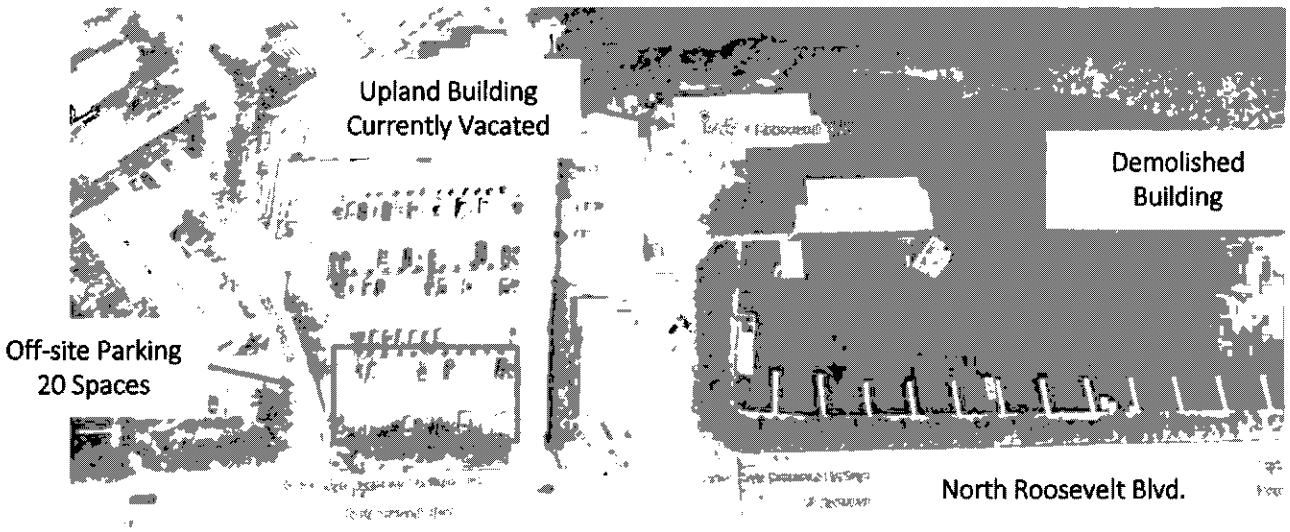
The applicant was responsive to the request for information from Utilities. No further information was requested.

Parking Analysis

The required parking for the dockage and two residential units consists of 32 vehicle spaces and eight bicycle spaces. The development meets the vehicle parking requirements with 12 on-site parking spaces and 20 off-site parking spaces. The off-site spaces are located in the parking lot of the Capitana and are subject to an exclusive easement. The easement A 60-foot-wide parcel owned by the Lion's Club sits between the subject property and the off-site parking. The applicant does not hold an access easement to allow customers to traverse the property. This requires customers parked in the off-site space to traverse the sidewalk on North Roosevelt to enter the property. Staff noted on a site visit that a "desire path" has formed in the vegetated/landscaped buffer between the Capitana parking lot and the Lion's Club property.

The bicycle parking requirement is eight spaces. The site plan associated with the building permit BLD2023-1299 reflects three bicycle parking spaces. Staff asked the applicant to revise the site plan to include a bicycle rack with an eight-space capacity. As of November 7, 2023, staff is awaiting confirmation from the applicant that eight bicycle spaces will be provided.

The proposed parking is sufficient to accommodate the parking requirements of the marina slips and the residential units. Any changes in commercial use resulting from the proposed modification to Condition 14 may trigger additional parking requirements. If additional parking is needed but cannot be accommodated onsite or through a linkage agreement, a variance would be required.



Parking Table		
Use	Code Required	Proposed
Dockage – 69 Recreational Slips *1 space per 4 slips*	18 vehicle spaces 5 bicycle spaces	18 vehicle spaces
Dockage – 6 Commercial Slips *1 space for every 3 passengers (based on vessel capacity)*	12 vehicle spaces 3 bicycle spaces	12 vehicle spaces
Residential Units – 2 Units *1 space per unit*	2 vehicle spaces	2 vehicle spaces
Proposed Accessory Uses to Dockage	Unknown	Unknown
Total	**32 vehicle spaces** **8 bicycle spaces**	**32 vehicle spaces** **3 bicycle spaces**

Surrounding Zoning and Uses:

North. Conservation – Outstanding Waters
Uses: Conservation/None (open waters)
East. Conservation – Mangroves & Medium Density Residential
Uses: Conservation, Multi-family residential
South. General Commercial
Uses: Commercial retail, storage facility, vehicle rentals
West. General Commercial
Uses: Civic activities, transient lodging

Process:

Planning Board:	November 16, 2023
City Commission:	TBD
Local Appeal Period:	10 Days
Planning renders to DEO for review:	Up to 45 days

Staff Analysis – Evaluation for Compliance with the Land Development Regulations: Major Development:

Section 108-91(C)(3) states that development plan modifications that exceed the scope of minor and administrative modifications shall be treated in the same manner as the original approval. Section 108-91(C)(4) provides that changes to specific conditions of approval shall require approval by the body that originally approved the development plan. Section 108-91(D)(1-2) states that for development not fitting within the minor and major development plan and development plan modification categories

outlined in 108-91, "the city planner shall determine the appropriate review process after considering similarity, complexity of the development, impacts on the demand for city services, and the potential for adverse impact(s) upon neighboring areas... In applying the criteria set forth herein, all phases of the total project or development shall be considered. In determining the appropriate level of review, the city planner may aggregate previous development completed within two years of a new application."

Based on the provisions described above, along with conversations with the applicant and City Attorney, the City Planner has prescribed a review process for this application. The review process shall begin with review by development review staff, followed by a recommendation from the Planning Board, and final approval by City Commission.

Code Criteria

Section 108-233: Concurrency Facilities and Other Utilities or Services

Comprehensive Plan Objective 9-1.5 directs the City to ensure that public facilities and services needed to support development are available concurrent with the impacts of new development. The analysis considers potable water, sanitary sewer, solid waste, drainage, roadway level of service and recreation. City Code Section 94-36 requires a concurrency review determination to be made concerning the proposed development.

1. Potable water supply

The proposal to allow for accessory uses to the marina on the upland, along with changes in nonconforming uses on the site, may increase demands on potable water supply. The applicant has not provided an analysis of the proposal's impact on potable water supply. Staff cannot anticipate the impact of other unknown accessory uses or other commercial uses on-site. There is no anticipated significant change in the potable water supply demands as a result of the proposal to allow charter vessels and vessels up to 35' in length.

2. Wastewater management

The proposed inclusion of commercial charter vessels may increase demand on wastewater needs accommodated by the sewer pump-out for vessels. The applicant stated that the pump-out has a capacity of 50 gallons per minute, which is sufficient to accommodate the typical 15-gallon capacity of waste tanks on vessels under 40'.

3. Water quality

The marina is located in the Conservation zoning district. The applicant has not provided an analysis of how the proposed changes will impact water quality. Staff is unable to determine the impacts of longer vessels, charter vessels, and unknown accessory and commercial uses on water quality.

The addition of charter vessels will likely increase activity within the marina basin, which may increase turbidity, which has an adverse impact on water quality.

The applicant shall comply with the FDEP Clean Marina program, in accordance with Resolution 14-316.

4. Stormwater Management/Drainage

No impacts to stormwater management and drainage plans are anticipated. Staff has observed standing water associated with high tides on a significant portion of the subject property during October 2023. Staff recommends that any drainage modifications be submitted to the City to ensure compliance with state and federal laws.

5. Solid waste
The applicant shall coordinate with Waste Management for the disposal of solid waste.

6. Roadways
No change is anticipated.

7. Recreation
No change is anticipated.

8. Fire Protection
No change is anticipated.

9. Reclaimed water system
No change is anticipated.

10. Other public facilities
No change is anticipated.

Section 108-232:Intergovernmental coordination
The applicant has obtained FDEP and Army Corps permits allow for the proposed changes to vessel length and the addition of charter boats.

Section 108-234: Appearance, design and compatibility:
The development plan modification must satisfy criteria established in Chapter 102; Articles III, IV and V of Chapter 108; Section 108-956; and Article II of Chapter 110 of the Key West City Code in the following manner:

- **Chapter 102- Historic Preservation:** The subject property is not located within the Historic District.
- **Articles III, IV and V of Chapter 108** – No site plan changes are proposed as part of this modification.
- **Section 108-956 – Potable water and wastewater:** – The applicant shall coordinate with FKAA to ensure access to potable water and a wastewater disposal system.
- **Chapter 110 – Resource Protection:** The applicant has obtained all necessary FDEP and Army Corps approvals for the proposal. The applicant shall comply with the provisions of the FDEP Clean Marina program.

  No site alterations are proposed. However, the applicant proposes an increase in intensity of commercial use on the property which is located in the Conservation zoning district and contains and is adjacent to environmentally sensitive lands.

  Section 110-186 requires that marina development plans include an environmental impact component. The original development plan did not anticipate the impact of the proposed modifications, and no

environmental impact analysis has been provided in this application.

Staff cannot anticipate the effect of the proposed modifications on environmental, coastal, soil, and water resources.

While the current approval allows for vessels up to 30', and the applicant is requesting approval for vessels up to 35', staff has observed that the marina's website is currently advertising slip leases for vessels up to 45'. In order to avoid the inadvertent leasing of vessels that exceed length restrictions, staff recommends that the marina operators develop a policy to ensure that vessels meet the length and draft requirements permitted by the existing and proposed development plan approvals.

The current development approval restricts any changes in use on the upland portion of the property, including accessory uses like boat maintenance. The proposed modifications would eliminate that restriction. In accordance with Section 110-186, boat maintenance activities in new or expanded marina facilities shall be located as far as possible from open waterbodies in order to reduce contamination of waterbodies, and runoff from boat maintenance must be collected and treated prior to discharge. Staff would like to clarify that approval of the proposed modification to Condition 14 would not relieve the property owner of the requirement to comply with any applicable land development regulations that regulate particular uses. For example, if the property owner seeks to provide boat maintenance activities, they may be required to obtain additional permits and approvals from the City or other agencies prior to engaging in those uses.

Section 108-235: Site location and character of use

The proposed modifications are not anticipated to adversely affect neighboring commercial uses. However, the site is located in and adjacent to the Conservation zoning district, and marinas and the regular mooring of charter vessels are prohibited. Therefore, the proposed modifications to Conditions 14 and 20 do not comply with the criteria identified in Section 108-325.

Additionally, the addition of charter vessels would likely result in increased intensity, trip generation, and impacts on water quality because charter vessels generally operate on a daily basis, often with multiple trips per day. In contrast, recreational vessels are generally used less frequently and result in lower intensity impacts.

Section 108-236: Appearance of site and structures

No site alterations are proposed as part of this application.

Section 108-237: Site plan

No site alterations are proposed as part of this application. Any site alterations necessary to pursue proposed accessory uses must be approved pursuant to the land development regulations.

Section 108-238: Architectural drawings

No physical alterations are proposed as part of this application. The applicant has stated that demolition and reconstruction of the upland structure will be proposed in the near future.

Section 108-239: Site amenities

No specific site amenities are identified in this application.

Section 108-240: Site survey

The applicant provided an updated site survey.

Section 108-241: Soil survey
No soil survey was provided.

Section 108-242: Environmentally sensitive areas
The project is located in an environmentally sensitive area and includes wetlands and open water. The site is located in and adjacent to the Conservation zoning district, and marinas and the regular mooring of charter vessels are prohibited. The applicant has not provided an analysis of the environmental impact of the proposed modifications. The applicant has obtained necessary permits from federal and state agencies to allow for charter vessels and vessels 35' in length.

Section 108-243: Land clearing, excavation and fill, tree protection, landscaping and irrigation plan.
No site alterations are proposed as part of this application.

Section 108-244: On-site and off-site parking and vehicular, bicycle, and pedestrian circulation
The applicant proposes to comply with parking requirements using on-site parking, as well as an exclusive easement agreement for 20 parking spaces at 2401 N. Roosevelt Boulevard. There is no pedestrian pathway from the off-site parking to the docks, except via an exit to the North Roosevelt Boulevard sidewalk. Staff strongly recommends an easement and walkway to be pursued and constructed.

Section 108-245: Housing
The site contains two recognized residential dwelling units in the upland structure. No changes are proposed as part of this application.

Section 108-246: Economic resources
The proposed project does not anticipate a yield to ad valorem taxes.

Section 108-247: Special Considerations

a) The relationship of the proposed development to the City's land use plans, objectives and policies is being evaluated as part of this analysis. The marina basin includes seagrass beds and marine life which are sensitive to increased turbidity and other forms of pollution and water runoff. Comprehensive Plan Policy 5-1.1.4 provides that these impacts shall be regulated through effective water quality management criteria, including coordination with state agencies having jurisdiction. The applicant has obtained necessary approvals from state agencies.
b) The project is located within the Coastal High-Hazard Area as defined by Policy 5-1.5.2: Definition of the City of Key West Coastal High-Hazard Area.
c) No unincorporated portions of the county would be impacted by the proposed development.
d) The project fronts a shoreline. No shoreline alterations are proposed that would impact shoreline access.
e) No special facilities are proposed to accommodate bus ridership.
f) Passive recreation space is not identified in the application.
g) Coordination with applicable agencies has occurred as evidenced by approved FDEP and Army Corps permits.
h) Necessary permits have been obtained from FDEP and the Army Corps.

Section 108-248: Construction management plan and inspection schedule
No construction is proposed.

Site plan (City Code Chapter 108, Article III)
The City shall not approve a site plan unless a finding is made that such site plan conforms to all applicable sections of the LDRs, pursuant to City Code Section 108-276.

Section 108-279: Location and screening of mechanical equipment, utility hardware and waste storage areas
No change to the approved site plan is proposed as part of this application. Utilities staff have noted City requirements to screen waste areas and receptacles.

Section 108-280: Front-end loaded refuse container location requirements
No change to the approved site plan is proposed as part of this application.

Roll-off compactor container location requirements (City Code Section 108-281)
No change to the approved site plan is proposed as part of this application.

Utility lines (City Code Section 108-282)
No change to the approved site plan is proposed as part of this application.

Commercial and manufacturing activities conducted in enclosed buildings (City Code Section 108-283)
None proposed.

Exterior lighting (City Code Section 108-284)
In accordance with Resolution 14-316, all lighting must be directional and/or shielded from the surrounding streets in accordance with a "dark sky" program.

Section 108-285: Signs
No changes are proposed.

Section 108-286: Pedestrian sidewalks
No change to the approved site plan is proposed as part of this application.

Section 108-287: Loading docks
No change to the approved site plan is proposed as part of this application.

Section 108-288: Storage areas
No change to the approved site plan is proposed as part of this application.

Chapter 108, Article VI: Landscaping
No change to the approved site plan is proposed as part of this application.

Chapter 108, Article VII: Off-street parking and loading
No change is proposed as part of this application. Any change in use pursued as a result of the proposed modification must meet off-street parking and loading requirements.

Chapter 108, Article VIII: Stormwater and surface water management
No change is proposed as part of this application. Any accessory uses pursued as a result of this proposed modification must meet stormwater and surface water management requirements of the land development regulations.

Utilities (Code Chapter 108, Article IX)
No change is proposed as part of this application. Staff has requested the applicant confirm that the required pump-out station has sufficient capacity to handle the additional demand that would result from the addition of six charter vessels. Staff has not received confirmation from the applicant as of November 2, 2023.

Art in Public Places (City Code Section 2-487)
An Art in Public Places plan was required for this development. No modification to the Art in Public Places plan is required as part of this application.

End of major development plan review.

Conditional Use Analysis:

Section 122-62: Specific Criteria for Approval

Findings: The Planning Board may find that the application meets the Code purpose of ensuring that "a conditional use shall only be permitted on specific sites where the proposed use may be adequately accommodated without generating adverse impacts on properties and land uses within the immediate vicinity."

The following criteria form the basis for a finding of compliance.

Characteristics of Use Described:

1. **Scale and Intensity**
   a. **Floor Area Ratio (FAR):**
      No change in Floor Area Ratio is proposed as part of this application.

   b. **Traffic Generation:**
      It is not expected that the proposed modification will result in trip generation that exceeds LOS standards.

   c. **Square Feet of Enclosed Building for Each Specific Use:**
      The applicant has not identified the characteristics or location of specific uses that would be permitted if the proposed modifications are approved.

   d. **Proposed Employment**
      This information was not provided.

   e. **Proposed Number of Service Vehicles:**
      This information was not provided.

   f. **Off-Street Parking:**
      The applicant will provide 32 off-street parking spaces.

2. **On or Off-site Improvements Required and Not Listed in Subsection (b)(1)**

1. Utilities:
   No change is proposed as part of this application. Staff has requested the applicant confirm that required pump-out station has sufficient capacity to handle the additional demand that would result from the addition of six charter vessels.

2. Public facilities:
   Staff does not anticipate the proposed modifications will result in additional demand on public facilities.

3. Roadway or Signal Improvements:
   None proposed.

4. Accessory Structures or Facilities:
   No accessory structures are proposed as part of this application.

5. Other Unique Facilities/Structures Proposed as Part of On-Site Improvements:
   None proposed.

3. On-Site Amenities Proposed to Enhance the Site and Planned Improvements.

   a. Open Space:
      No change to the approved site plan is proposed as part of this application.

   b. Setbacks from Adjacent Properties:
      No change to the approved site plan is proposed as part of this application.

   c. Screening and Buffers:
      No change to the approved site plan is proposed as part of this application.

   d. Landscaped Berms Proposed to Mitigate Against Adverse Impacts to Adjacent Sites:
      No change to the approved site plan is proposed as part of this application.

   e. Mitigative Techniques for Abating Smoke, Odor, Noise, and Other Noxious Impacts:
      None proposed.

122-62(C): Criteria for Conditional Use Review and Approval: Applications For a Conditional Use Review Shall Clearly Demonstrate the Following:

1. Land Use Compatibility:
   Docks are one of the only conditional uses for areas below the mean high-water line in the Conservation zoning district. Marinas, however, are not a permitted or conditional use in the Conservation zoning district. There are no commercial uses that are either permitted-by-right or as a conditional use in the Conservation zoning district. Therefore, any changes that increase or expand commercial activity on the site are not compatible with the land use regulations for the subject district.

2. Sufficient Site Size, Adequate Site Specifications and Infrastructure to Accommodate the Proposed Use:

The physical characteristics of the dock basin and minimum depth requirements of the LDRs and Comprehensive Plan restrict the draft of vessels to three feet. The application states that the marine industry has made technological advancements since the time of the development plan approval which allow for larger boats to decrease their potential draft, suggesting that the basin can accommodate larger boats while meeting the three-foot draft requirement.

Staff cannot confirm whether the site contains the utility infrastructure to accommodate commercial vessels; further information about the capacity of the pump-out is required. Staff cannot anticipate whether the site is adequate to accommodate the accessory uses and other potential commercial uses on-site without a description of the uses.

3. **Proper Use of Mitigative Techniques:**
   None are proposed as part of this application.

4. **Hazardous Waste:**
   The application does not address the presence of hazardous waste. Staff recommends that the applicant develop a policy regarding the fueling and/or maintenance of vessels at the dockage to avoid spills and runoff that may result from customers topping off fuel and oil on their vessels.

   The applicant shall ensure that any boat maintenance activities comply with land development regulations regarding the treatment and disposal of hazardous waste.

5. **Compliance with Applicable Laws and Ordinances:**
   The applicant shall comply with applicable laws and ordinances.

6. **Additional Criteria Applicable to Specific Land Uses. Applicants Shall Demonstrate the Proposed Conditional Use Satisfies the Following Criteria:**

   a. **Land Uses Within a Conservation Area:**

      The applicant has obtained the necessary state and federal permits for the dock, including the accommodation of charter vessels and vessels 35' in length. Any future accessory uses, or any change in use on the site, must be evaluated based on the specific characteristics of the uses, so staff cannot confirm whether those uses satisfy the criteria for land uses within a conservation area.

      Section 110-183: *Living marine resources*, states that development within tidal waters shall avoid adverse impacts on benthic communities, including seagrass beds and live bottom communities which are sensitive to increased turbidity and runoff. Staff anticipates that increased intensity associated use of charter vessels would increase turbidity in the basin and my result in adverse impacts on living marine resources, and particularly seagrass beds, which are critical for carbon storage, erosion control, biodiversity, and flood protection.

      Section 110-186 provides that there shall be no new marinas in or immediately to outstanding Florida waters. The basin includes outstanding Florida waters. Therefore, the request for accessory uses to a marina does not comply with Section 110-186.

      Section 110-186 provides that all new or expanded marinas shall provide a demonstration of compliance with state water quality standards by maintaining a water quality monitoring program approved by the state department of environmental protection.

b. **Residential Development:**

Residential development is not proposed as part of this application.

c. **Commercial or Mixed-Use Development:**

The applicant is requesting an expansion of commercial uses on a site within the Conservation zoning district, which conflicts with the provisions of the Conservation zoning district regulations. Any future expanded accessory or commercial uses must be reviewed in accordance with the requirements set forth in the LDRs.

d. **Development Within or Adjacent to Historic Districts:** Not applicable.

e. **Public Facilities or Institutional Development:** Not applicable.

f. **Commercial Structures, Uses and Related Activities Within Tidal Waters: The criteria for commercial structures, uses and related activities within tidal waters are as provided in Section 122-1186.**

Section 122-1186 provides that the regular mooring of watercraft as a commercial enterprise, including charter vessels, are not permitted unless within a duly permitted marina. Therefore, the request for a modification to Condition 20 may not be permitted.

g. **Adult Entertainment Establishments:** Not applicable.

RECOMMENDATION:

The applicant has requested to modify the conditions of approval of City Commission Resolution 14-316 to allow for the dockage of charter vessels, dockage of vessels up to 35', changes to legally nonconforming uses, and the establishment of accessory uses to a marina.

In accordance with 122-128, 122-129, commercial marinas are neither a permitted nor a conditional use in the Conservation zoning district. Section 122-130 provides that all uses not specifically or conditionally provided for in the Conservation zoning district are prohibited. Further, Section 122-1186 provides that commercial charter boats may only be regularly moored in duly permitted marina. Therefore, staff cannot recommend approval of the request to allow for six charter vessels to operate at the subject property because it is prohibited by the Code.

The approved dockage is a conditional use in the Conservation district. The Code provides that an accessory use to a conditional use shall also be a conditional use. The application proposes to amend Condition 14 of Resolution 14-316 to include the statement "Accessory uses to the marina shall be permitted." However, the Code requires that approval of conditional uses must be based upon a finding that the specific characteristics of use comply with review criteria. The proposed language in Condition 14 would erroneously suggest that accessory conditional uses may be established without specific conditional use approval. Therefore, staff cannot recommend approval of the request to include the accessory use language in Condition 14

Staff also strongly recommends that the property owner negotiate an easement for pedestrian access from the off-site parking area that would allow guests to avoid entering the sidewalk on North Roosevelt Boulevard.

The Planning Department, based on the criteria established by the Comprehensive Plan and the Land Development Regulations, recommends to the Planning Board that the request to modify the conditions of approval of City Commission Resolution 14-316 be **partially approved**, in the form and subject to the conditions listed below:

General Conditions

1. This resolution modifies Conditions 14 and 23 of City Commission Resolution 14-316. All of the other conditions of Resolution 14-316 shall remain in effect. Conditions 14 and 23 shall be revised as follows:

   *Coding: Added language underlined, deleted language is ~~struck~~ through.

   Condition 14: There shall be no other commercial use of the marina area or parking lot, nor shall the development plan or conditional use authorize the change of the existing legally non-conforming uses to any other commercial use, unless an application for a change of nonconforming use is submitted and approved in accordance with the Land Development Regulations.

   Condition 23: No vessel longer than ~~thirty (30)~~ thirty-five (35) feet, nor any vessel with a draft of more than three (3) feet shall be docked, or allowed to use the marina.

2. The property owner shall ensure that all customers who rent or lease dock slips are aware of the restriction on vessel length. The applicant shall not advertise lease slips for vessels longer than 35'.
3. The property owner may continue the legally nonconforming office use of the existing upland structure. The property owner shall seek conditional use approval to operate any additional or expanded accessory uses to the dockage, in accordance with the procedures outlined in the Land Development Regulations.

Conditions prior to issuance of a Conditional Use Permit, pursuant to City Code Chapter 18, Article XII, Division 1:

4. The property owner shall provide a demonstration of compliance with state water quality standards by maintaining a water quality monitoring program approved by the Florida Department of Environmental Protection in accordance with Section 110-186.
5. The business tax receipt associated with the subject conditional use approval shall be modified to reflect the conditions and restrictions of Resolution 14-316 and any future resolutions that modify the conditions of Resolution 14-316.

Conditions prior to issuance of a final Certificate of Occupancy:

6. The property owner shall obtain and maintain a Conditional Use Permit, pursuant to City Code Chapter 18, Article XII, Division 1. The City Code Compliance shall inspect the property on an annual basis upon reasonable notice to determine compliance with the conditions of

the Planning Board resolution. The Conditional Use Permit shall reflect the conditions of City Commission Resolution 14-316 and any future resolutions that modify the conditions of Resolution 14-316.

7. The applicant shall obtain approval of a public art plan from the Art in Public Places Board. The art shall be installed and inspected by the City.

Application

SPOTTSWOOD, SPOTTSWOOD, SPOTTSWOOD & STERLING, PLLC
ATTORNEYS AND COUNSELORS AT LAW
500 FLEMING STREET
KEY WEST, FLORIDA 33040

JOHN M. SPOTTSWOOD, JR.
ERICA HUGHES STERLING
ROBERT A. SPOTTSWOOD, JR.
RICHARD J. McCHESNEY
ROBERT H. GEBAIDE

OF COUNSEL:

JOHN M. SPOTTSWOOD (1920 – 1975)
ROBERT A. SPOTTSWOOD of Counsel

Telephone | 305-294-9556
Facsimile | 305-504-2696

September 15, 2023

Katie Halloran, Planning Director
City of Key West Planning Department
1300 White Street
Key West, Florida 33040

RE: 2407 N. Roosevelt Ave, Key West, Florida 33040
Major Modification to Development Plan Resolution 14-316

Dear Ms. Halloran,

On behalf of our client, 2407 N Roosevelt, LLC, (the "Applicant") we are seeking City Commission approval to modify specific conditions of a Major Development Plan and Conditional Use approved by Res. 14-316, for the property located at 2407 N Roosevelt Blvd, Key West, FL 33040 (the "Property").

Enclosed herein is an application to modify three conditions contained in Res. 14-316. Per code Sec. 108-91(C)(4), changes to specific conditions required by the original approval shall require approval by the administrative body that originally approved the development and shall be noticed in accordance with division 2 of article VIII of chapter 90. The City Commission approved by Resolution 14-316, the Major Development Plan and Conditional Use of the above referenced property.

The Applicant is requesting a modification to three of the 24 enumerated conditions. Namely, condition #14, condition #20 and condition #23. The following, or similar, modification language is being requested:

> 14. There shall be no other commercial use of the marina area or parking lot, nor shall the development plan or conditional use authorize the change of the existing legally non-conforming uses to any other commercial use, unless an application for a change of nonconforming use is submitted. Accessory uses to the marina shall be permitted.
>
> 20. The marina shall have no more than six (6) charter vessels at a maximum of (six) 6 passengers for active or passive docking.
>
> 23. No vessel longer than forty (40) feet, nor any vessel with a draft of more than three (3) feet shall be docked, or allowed to use the marina.

Since this approval 9 years ago, the Property has changed ownership. New owners have already made improvements to the marina by removing the dilapidated 3,300 square foot over-the-water office structure. The site plan revisions propose to reduce and relocate the docks off the mangrove fringe, thereby decreasing the potential for environmental impacts. The proposed location of the charter boats, if the Commission approves the change, would be aggregated on the Northerly dock of the Property. Since 2014, the marine industry has made many advances in technology and manufacturing allowing for larger boats to decrease their potential draft and, as such, the market for these types of vessels has increased.

Impact Reduction Summary (figures in square feet)

	Direct In-Water Impacts	Shading Impacts	Total Impacts
Building Demolition	33.2	5,694.1	5,727.3
East Shoreline Dock	10.6	1,271.4	1,282.0
Total Reduced Impacts	**43.8**	**6,965.4**	**7,009.3**

It is also important to note that the former commercial building located over the bay bottom has been demolished and will not be rebuilt, thus decreasing the overall parking demand on the Property.

	USES	CODE REQUIREMENTS	TOTAL EXISTING	
EXISTING	Floating Structure (3,200 sq. ft.)	1 sp/300 sq. ft.	10.66 spaces	29.41 spaces
	75 Slips no charter	1 sp/4 slips	18.75 spaces	
PROPOSED	68 personal slips;	1 sp/4 slips	17 spaces	29 spaces
	6 charter slips	1sp/3 pass	12 spaces	

Respectfully,

Richard J. McChesney
For the Firm

Enc.
As Stated

DEVELOPMENT PLAN AND CONDITIONAL USE APPLICATION

CITY OF KEY WEST, FLORIDA • PLANNING DEPARTMENT

Address: 1300 White Street • Key West, Florida 33040
Phone: 305-809-3764
Website: www.cityofkeywest-fl.gov

Fees listed below include a $325.50 advertising/noticing fee and a $115.76 fire review fee where applicable Any Major or Minor Development Plan returned to the Planning Board after initial approval willrequire a new application fee equivalent to one-half of the current fee schedule

Development Plan and Conditional Use Application Fee Schedule	
Development Plan	
Minor Development Plan	
Within Historic District Total Application Fee	$ 3,566.85
Outside Historic District Total Application Fee	$ 2,872.27
Conditional Use Total Application Fee	$ 1,714.65
Extension Total Application Fee	$ 1,020.07
Major Development Plan Total Application Fee	$ 4,724.47
Conditional Use Total Application Fee	$ 1,714.65
Extension Total Application Fee	$ 1,020.07
Administrative Modification Fee	$ 840.00
Minor Modification Fee	$ 1,601.25
Major Modification Fee	$ 2,262.75
Conditional Use (not part of a development plan) Total Application Fee	$ 3,335.32
Extension (not part of a development plan) Total Application Fee	$ 1,020.07
Revision or Addition (not part of a development plan) Fee	$ 2,100.00

Applications will not be accepted unless complete

Development Plan	Conditional Use	Historic District
Major X		Yes
Minor		No x

Please print or type:

1) Site Address: 2407 N Roosevelt Blvd

2) Name of Applicant: Spottswood, Spottswood, Spottswood & Sterling, PLLC

3) Applicant is:
Property Owner: _____
Authorized Representative: x
(attached Authorization and Verification Forms must be completed)

4) Address of Applicant: 500 Fl emingStreet, Key West, FL 33040

5) Applicant's Phone #: 305-294-9556 Email: Richard@spottswoodlaw.com

6) Email Address: _____

7) Name of Owner, if different than above: 2407 N Roosevelt LLC

8) Address of Owner: 1646 W. Snow Avenue, Ste 29, Tampa, FL 33606

9) Owner Phone #: 480-540-89 8 Email: Sam@AMERICANMARINAPROPERTIES.com

10) Zoning District of Parcel: _____ RE# 00002280-00100

11) Is Subject Property located within the Historic District? Yes _____ No X

If Yes: Date of approval _____

HARC approval # _____

OR: Date of meeting _____

12) Description of Proposed Development and Use. Please be specific, list existing and proposed buildings and uses, number of dwelling units, parking, restaurant seats, vehicles proposed, etc. If there is more than one use, describe in detail the nature of each use (Give concise description here and use a separate sheet if necessary).

Request modificaitons to 3 of 24 conditions as approved by CC Resolution 14-316. Modification to Condition #14 to allow for marina related uses on the upland; Condition #20 to permit six charter boats to operate out of the marina and Condition #23 to change the maximum allowed boat length to 40 ft.

13) Has subject Property received any variance(s)? Yes _____ No X

If Yes: Date of approval _____ Resolution # _____

Attach resolution(s).

14) Are there any easements, deed restrictions or other encumbrances on the subject property?

Yes _____ No X

If Yes, describe and attach relevant documents.

A. For both *Conditional Uses* and *Development Plans*, provide the information requested from the attached **Conditional Use and Development Plan** sheet.

B. For *Conditional Uses* only, also include the **Conditional Use Criteria** required under Chapter 122, Article III, Sections 122-61 and 122-62 of the Land Development Regulations (see attached copy of criteria).

C. For *Major Development Plans* only, also provide the **Development Plan Submission Materials** required under Chapter 108, Article II, Division 7, Sections 108-226 through 108-248 of the Land Development Regulations (see attached copy of criteria) and any additional information as determined by the Planning Staff.

D. For both Conditional Uses and Development Plans, one set of plans MUST be signed & sealed by an Engineer or Architect.

City Commission
Resolution

RESOLUTION NO. 14-316

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, GRANTING MAJOR DEVELOPMENT PLAN, CONDITIONAL USE AND LANDSCAPE WAIVER APPROVALS PURSUANT TO SECTION 108-91.B.2.(c) OF THE LAND DEVELOPMENT REGULATIONS OF THE CODE OF ORDINANCES OF THE CITY OF KEY WEST, FLORIDA TO CONSTRUCT DOCKAGE WITH 79 BERTHS ON PROPERTY LOCATED AT 2407 NORTH ROOSEVELT BOULEVARD (RE #00002280-000100, AK #8890613) IN THE OUTSTANDING WATERS OF THE STATE (C-OW) ZONING DISTRICT; PROVIDING CONDITIONS; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, Section 108-91 of the Code of Ordinances (the "Code") of the City of Key West, Florida (the "City") requires that outside of the Historic District a Major Development Plan is required for addition of outdoor commercial activity consisting of restaurant seating, outdoor commercial storage, active recreation, outdoor sales area or similar activities equal to or greater than 5,000 square feet; and

WHEREAS, the applicant proposed construction of a dock system with 79 berths; and

WHEREAS, Code Section 108-196(a) requires the Planning Board to review and approve, approve with conditions or deny the proposed Major Development Plan and Conditional Use in an advisory capacity to the City Commission; and

WHEREAS, Code Section 108-517(b)(3) requires the Planning Board to consider the landscape waiver request and render the final action; and

WHEREAS, this matter came before the Planning Board at a duly noticed public hearing on August 21, 2014, resulting in Planning Board Resolution No. 2014-48; and

WHEREAS, the Planning Board determined that the granting of the Major Development Plan, Conditional Use and Landscape Waiver is in harmony with the general purpose and intent of the Land Development Regulations, and will not be injurious to the neighborhood, or otherwise detrimental to the public welfare; and

WHEREAS, pursuant to Section 108-198, the City Commission shall review and act upon Major Development Plan proposals; and

WHEREAS, the City Commission determined that the granting of the Major Development Plan and Conditional Use will be in harmony with the general purpose and intent of the Land Development Regulations, and will not be injurious to the neighborhood, or otherwise detrimental to the public welfare.

NOW THEREFORE BE IT RESOLVED by the City Commission of the City of Key West, Florida:

Section 1. That the above recitals are incorporated by reference as if fully set forth herein.

Section 2. That the City Commission grants approval of the application for Major Development Plan, Conditional Use and Landscape Waiver for the construction of 79 berths on property

located at 2407 North Roosevelt Boulevard (RE # 00002280-000100, AK # 8890613) in the C-OW Zoning District pursuant to Sections 108-91B.2(c) of the Land Development Regulations of the Code of Ordinances of the City of Key West, Florida, as shown in the attached plans dated September 8, 2013, with the following conditions provided in Planning Board Resolution 2014-48, and specified as follows:

Conditions to be completed prior to the issuance of a building permit:

1. The Applicant receives all necessary permits from relevant State and Federal Agencies.

2. In addition to the existing on-site parking, the Applicant shall make available twenty (20) exclusive parking spaces for use in association with the proposed development. Confirmation that said additional parking spaces are available for the proposed development shall be presented to the Planning Department prior to the issuance of any building permit, land clearing permit, or any permit required for physical furtherance of the proposed development. The City Attorney shall review any parking easement agreement between applicant and any property owner which is in furtherance of the above-stated to insure compliance with City of Key West Code Sec. 108-576(a).

3. If the construction project costs exceed $500,000, the Applicant shall obtain approval of a Public Art Plan from the AIPP Board, pursuant to City Code Section 2-487, and may include payment of an in-lieu fee.

4. The Applicant shall obtain the proper permits for any trimming of mangroves during construction of the project.

Conditions to be completed prior to the issuance of a Certificate of Occupancy:

5. On-site artwork shall be installed and inspected by the City pursuant to Section 2-487.

6. The applicant coordinates with the U.S. Coast Guard to provide and maintain navigational markers from the docking basin to open water.

7. All lighting complies with "dark sky" or equivalent program on the docks themselves.

8. The Applicant will provide sewage pump-out facilities for all boats, with pump-out facilities accessible 24 hours a day to all vessels of any length.

9. The Applicant shall provide the parking lot landscaping required by LDR Section 108-414(b) as evidenced by a landscape plan prepared by a licensed landscape

architect and reflective of the conceptual design contained in the email to the Planning Department on July 8, 2014.

10. The on-site parking lot shall be striped and the driveway to said parking stalls appropriately marked.

11. The clear site triangle for the access route to North Roosevelt Boulevard shall be maintained clear of obstruction as per City Code.

12. The Applicant shall install the hose cabinets, standpipes and other fire suppression and alarms as required by the City Fire Marshall.

13. The parking lot on site shall be restriped to provide standard size stalls required by City Code, including two handicapped stalls.

14. There shall be no other commercial use of the marina area or parking lot, nor shall the development plan or conditional use authorize the change of the existing legally non-conforming uses to any other commercial use.

15. There shall be no boat storage of any kind on the upland portions of the site inclusive of the parking lot.

16. The Applicant shall provide a fire department hammerhead turn-around, as required by code.

17. The Applicant shall provide a letter from a structural engineer determining the hammerhead access road

in close proximity of the water line can safely handle the total weight of our fire department trucks.

18. The Applicant shall provide a secondary emergency egress walkway for emergency purposes only, approved location and specifications are addressed in the Fire Access Site Plan (Sheet Number C-7.0).

Conditions subject to Conditional Approval Permit, per Ordinance 10-22, subject to an associated annual inspection:

19. The applicant maintains a Florida Department of Environmental Protection Clean Marina Designation.

20. There shall be no use of the marina for charter boats of any kind, including active or passive docking of charter vessels.

21. There shall be no boat ramp, or automobile or hoist-assisted boat launching of any type.

22. There shall be no storage of boat trailers on any part of the site, nor in any of the parking spaces on site, or in leased areas.

23. No vessel longer than thirty (30) feet, nor any vessel with a draft of more than three (3) feet shall be docked, or allowed to use the marina.

24. There shall be no slips outside the mangrove fringe (per revised site plans dated October 22, 2014).

Section 3. Full, complete, and final application for all permits required for which this resolution is wholly or partly necessary, shall be submitted in its entirety within 12 months after the date hereof.

Section 4. This Major Development Plan does not constitute a finding as to ownership or right to possession of the property, and assumes, without finding, the correctness of applicant's assertion of legal authority respecting the property.

Section 5. This Resolution shall go into effect immediately upon its passage and adoption and authentication by the signatures of the presiding officer and the Clerk of the Commission.

Section 6. This Resolution is subject to appeal periods as provided by the City of Key West Code of Ordinances (including the Land Development Regulations). After the City appeal period has expired, this permit will be rendered to the Florida Department of Economic Opportunity. Pursuant to Chapter 73C, F.A.C., this permit is not effective for forty five (45) days after it has been properly rendered to the DEO with all exhibits and applications attached to or incorporated by

reference in this approval; that within the forty five (45) day review period the DEO can appeal the permit to the Florida Land and Water Adjudicatory Commission; and that such an appeal stays the effectiveness of the permit until the appeal is resolved by agreement or order.

Passed and adopted by the City Commission at a meeting held this 21 day of October, 2014.

Authenticated by the presiding officer and Clerk of the Commission on November 17, 2014.

Filed with the Clerk November 17, 2014.

Mayor Craig Cates	Yes
Vice Mayor Mark Rossi	Yes
Commissioner Teri Johnston	Yes
Commissioner Clayton Lopez	Absent
Commissioner Billy Wardlow	Yes
Commissioner Jimmy Weekley	Yes
Commissioner Tony Yaniz	Yes

CRAIG CATES, MAYOR

ATTEST:

CHERYL SMITH, CITY CLERK

Authorization

City of Key West
Planning Department

Authorization Form
(Where Owner is a Business Entity)

Please complete this form if someone other than the owner is representing the property owner in this matter.

I, SAMUEL NAPP as
Please Print Name of person with authority to execute documents on behalf of entity

MANAGING MEMBER of 2407 N ROOSEVELT LLC
Name of office (President, Managing Member) *Name of owner from deed*

authorize RICHARD McCHESNEY / SPOTTSWOOD LAW FIRM
Please Print Name of Representative

to be the representative for this application and act on my/our behalf before the City of Key West.

Signature of person with authority to execute documents on behalf of entity owner

Subscribed and sworn to (or affirmed) before me on this 6/28/23
Date

by Samuel Napp
Name of person with authority to execute documents on behalf of entity owner

He/She is personally known to me or has presented AZDL: D06319756 as identification.

Notary's Signature and Seal

Type of identification produced or stamped

HH128696
Commission Number, if any

Verification

City of Key West
Planning Department
Verification Form
(Where Applicant is an entity)

I, RICHARD McCHESNEY, in my capacity as MEMBER
(print name) *(print position; president, managing member)*

of SPOTSWOOD LAW FIRM
(print name of entity)

being duly sworn, depose and say that I am the Authorized Representative of the Owner (as appears on the deed), for the following property identified as the subject matter of this application:

2407 N. ROOSEVELT BLVD. KEY WEST
Street address of subject property

I, the undersigned, declare under penalty of perjury under the laws of the State of Florida that I am the Authorized Representative of the property involved in this application; that the information on all plans, drawings and sketches attached hereto and all the statements and answers contained herein are in all respects true and correct.

In the event the City or the Planning Department relies on any representation herein which proves to be untrue or incorrect, any action or approval based on said representation shall be subject to revocation.

Signature of Applicant

Subscribed and sworn to (or affirmed) before me on this 6/28/23 by
date

RICHARD McCHESNEY
Name of Applicant

He/~~She~~ is personally known to me or has presented _____ as identification.

Signature of Notary Public

Notary Public State of Florida
Lori L. Thompson
My Commission
HH 209275
Exp: 12/18/2025

Name of Acknowledging Notary Public (typed, printed or stamped)

Commission Number, if any

SunBiz Information

Detail by Entity Name

Foreign Limited Liability Company
2407 N ROOSEVELT LLC

Filing Information

Document Number	M22000008075
FEI/EIN Number	88-1674933
Date Filed	05/20/2022
State	DE
Status	ACTIVE
Last Event	LC AMENDMENT
Event Date Filed	05/26/2022
Event Effective Date	NONE

Principal Address

1646 W. SNOW AVE.
STE. 29
TAMPA, FL 33606

Changed: 03/20/2023

Mailing Address

1646 W. SNOW AVE.
STE. 29
TAMPA, FL 33606

Changed: 03/20/2023

Registered Agent Name & Address

CORPORATION SERVICE COMPANY
1201 HAYS STREET
TALLAHASSEE, FL 32301

Name Changed: 03/20/2023

Address Changed: 03/20/2023

Authorized Person(s) Detail

Name & Address

Title MGR